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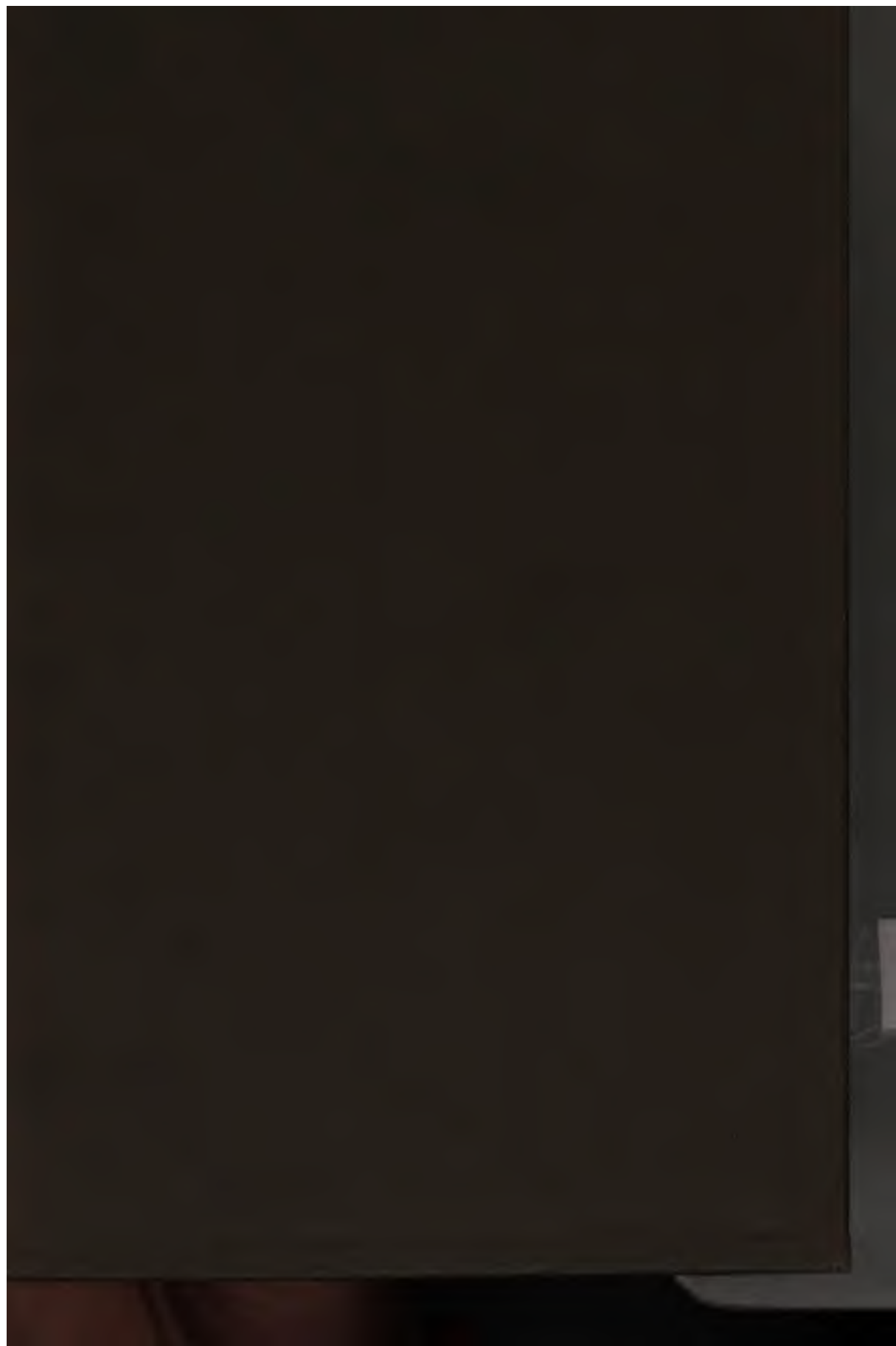
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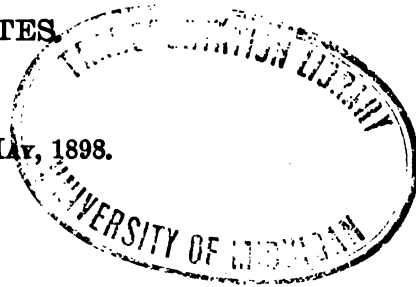
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INTERSTATE COMMERCE COMMISSION.

HON. MARTIN A. KNAPP, OF NEW YORK, *Chairman.*

HON. JUDSON C. CLEMENTS, OF GEORGIA.

HON. JAMES D. YEOMANS, OF IOWA.

HON. CHARLES A. PROUTY, OF VERMONT.

HON. WILLIAM J. CALHOUN, OF ILLINOIS.

HON. WILLIAM R. MORRISON, of Illinois, to December 31, 1897,
Chairman, succeeded on March 21, 1898, by Mr. Commissioner
CALHOUN.

EDWARD A. MOSELEY, *Secretary.*

were engaged in unlawful practices in violation of the provisions of that Act in the transportation of grain and grain products from western points, and particularly from points on the Missouri River to and through Chicago and other points, and had been so engaged since March 31, 1896, it was ordered that the Commission would on August 4th, 1896, at the city of Chicago, proceed to the investigation of said alleged unlawful practices subsequent to the said March 31st; and it was further ordered that the several carriers named in said order, among which was the Chicago Great Western Railway Company, should file with the Commission, on or before July 23d, 1896, written answers under oath touching said alleged unlawful practices, and should appear before the Commission for further examination in relation thereto at the investigation so to be made as aforesaid.

In compliance with this order the various railway companies named therein filed answers, and a hearing was had upon August 4th and succeeding days. The Chicago Great Western Railway Company filed its answer and was represented at the hearing by counsel and by its president.

Various questions are raised by the facts disclosed upon that investigation, which will hereafter be disposed of, but which are not material to be stated at the present time. The facts relating to the matter now for determination, and which are found by the Commission, are as follows:

The Chicago Great Western Railway Company is a corporation organized under the laws of Illinois and operating a line of railroad between Chicago and Kansas City.

The Iowa Development Company is a corporation organized under the laws of Iowa for the purpose of holding certain lands belonging to the Chicago Great Western Railway Company. Its capital stock was never paid in in money and is all owned by the Railway Company. The secretary of the two companies is the same. The vice president of the Railway Company is the president of the Development Company. The president of the Railway Company testified that the three active directors, who managed the affairs of both companies, were the same, and it is so found. The offices of the two companies were in the same building.

Some time previous to April 1, 1896, the president of the Railway Company had made an extended investigation into the con-

dition of the grain traffic and grain rates between Kansas City and Chicago. As a result of that investigation he had satisfied himself that if one company had enough of that traffic so that it could increase the size of its cars, haul loaded cars both ways, and in general handle the grain to the best advantage, it could be done at a profit; and he had also satisfied himself that in the existing state of rates and of traffic conditions this could not be done without the adoption of some expedient other than those in use by other railroads. For the purpose of securing this traffic he devised and put in operation the following scheme:

He employed a Chicago company engaged in the handling of grain and provisions and known as the Anglo-American Provision Company, to purchase grain upon the Kansas City market and to ship it to Chicago over the lines of the Railway Company. The grain was bought and consigned to the Anglo-American Company by one of its agents at Kansas City, who acted as the consignor, the Anglo-American Company being the consignee. Upon receiving a bill of lading from the Railway Company this consignor would draw a draft for the amount of the purchase price upon the consignee and attach the bill of lading to the draft as security. When the grain arrived in Chicago the consignee would sell it upon the Chicago market at the market price, and from the proceeds would pay the draft and would pass the balance remaining in its hands after deducting its commission for the purchase and sale, over to the Iowa Development Company. The Anglo-American Company paid the freight by means of a draft upon the Development Company, which the local agent, acting under instructions from the Railway Company, received and treated as a cash payment of the freight.

This practice began April 1, 1896. It did not appear what the Development Company did with the funds so passed over to it for the time being, but it did appear that there was no settlement and no payment of the freight to the Railway Company until after the order in this case, which was made July 7, 1896; in other words, for over three months the Development Company had no settlement and made no payment on account of this freight to the Railway Company. During this time the Railway Company ordinarily required a cash payment of its freight bills, but in some instances, in the case of large shippers, permitted weekly

settlements. The amount remaining in the hands of the Anglo-American Company and paid over by it to the Development Company during the period covered by this investigation, which was for something more than three months succeeding April 1, averaged 10 $\frac{7}{8}$ cents per 100 pounds for all the grain so handled. The rate specified in the waybills upon which the grain was carried, and which was paid by drafts upon the Iowa Development Company, ranged from 11 to 18 cents per 100 pounds. These rates specified in the waybills were the same rates at which the Railway Company would have transported freight for any other shipper offering it under the same conditions at the same time. The published rate during this time was about 17 cents, the difference between that and the rates named in the waybills being accounted for by the peculiar condition of things which existed at those points and which is not material to be referred to here.

Neither the Railway Company nor the Development Company furnished any money. The security of the Anglo-American Company was found in the fact that the Railway Company accepted in payment of its freight the draft upon the Development Company, thus in reality pledging the entire value of the grain in Chicago as payment for its cost in Kansas City, a security which was at all times ample, since the rate between the two places was usually one-half the value of the grain in Chicago. At the time of the settlement between the Development Company and the Railway Company, after the making of the order in this case, it was found that the difference between the nominal rate at which the grain had been carried, that is, the amount of the drafts drawn on the Development Company and the actual amount of money received from the Anglo-American Company was about \$15,000, and the Development Company then borrowed \$15,000 and paid the Railway Company that balance.

The president of the Railway Company in substance admitted, and the Commission finds as an inference of fact from the other testimony independent of his admission, that this scheme was devised and entered upon by the Railway Company for the sole purpose of procuring this grain for transportation; that the only purpose or use of the Development Company was to act at the bidding of the Railway Company in the furtherance of this plan, and that neither it nor the Railway Company had any *bona fide*

intention of dealing in the grain so bought any further than might be necessary to secure the same for transportation over the railroad of the Railway Company.

The result was that, although there were five other railway lines directly competing for this traffic between Chicago and Kansas City, many of them shorter and better equipped than the Chicago Great Western, that company carried, for the period covered by this investigation, nearly 70 per cent of all the corn moved between those points.

The Railway Company admitted the facts substantially as above found, but claimed that in doing what had been done, it had not violated the Act, and that therefore this Commission had no power to interfere with these practices: For, first, the Iowa Development Company owned this grain and paid the same charges that any other shipper would have paid, and if it lost by the transaction, or if the Railway Company, indirectly through its stock ownership lost, it was no affair of this Commission; and, second, assuming that the Development Company was not the owner of the grain in fact, but that the Railway Company owned it, still the Railway Company might transport its own property for a less sum than that for which it transported the property of other persons.

The Commission is unable to yield its assent to these propositions. Assuming that the Development Company was an entity in these transactions, that the legal title to the grain actually stood in it, and that the nominal freight charges were actually paid by it, still it was merely a tool in the hands of the Railway Company, and the act accomplished was the act of that company. The Railway Company furnished the credit by accepting drafts in payment of its freight charges; it suffered the whole loss by virtue of its ownership of the entire stock of the Development Company. It was precisely as if the Railway Company had said to an individual: Buy this grain; ship it by our route, pay the freights, and we will make good to you whatever loss occurs in the transaction. It may not have been a special rate or rebate, but it was clearly a "device" by which it transported this merchandise for a greater or less compensation than it exacted from all other persons for a like and contemporaneous service under similar circumstances and conditions.

It should be carefully borne in mind that this was not an enterprise entered upon at the instance of the Development Company in contemplation of any profit which might accrue to it, but was undertaken exclusively at the bidding and for the benefit of the Railway Company for the sole purpose of securing this freight, which it could not secure in the ordinary course of business.

Suppose, in the second place, that the Development Company be entirely eliminated from the consideration, and that the transaction be treated, as it in fact was, as the transaction of the Railway Company. In that case the Railway Company owned the grain, transported it for itself, and received for its compensation the difference in price between what was paid and what it sold for, less the commissions. There was no fixed rate. The rate varied with each individual shipment. The rate actually received was much less than was or would have been charged any other person for the same service under the same conditions. Clearly, therefore, the transaction was both a violation of the 6th section and an unjust discrimination under the 2d and 3d sections, unless the Railway Company, by virtue of the fact that it owned the merchandise transported, was relieved from the operation of the Act. We hold that it was not. Granting that the Railway Company had the legal right under its charter to buy and sell this corn in this manner, still it must own it and transport it subject to the same limitations as every other individual. In its capacity of owner it was a private person, in its capacity of carrier it was a public servant. If it elected to become a private individual in respect of the ownership of this grain, it could extend to itself in its capacity as a public servant no other or different privileges than it extended to every other shipper. To hold that this respondent might become a shipper on its own account for the express purpose of avoiding the Act to Regulate Commerce would be to nullify that Act in many essential respects.

In thus holding, we are not unmindful of what the Commission has said in *Haddock v. Delaware, L. & W. R. Co.* 4 I. C. C. Rep. 296, 3 Inters. Com. Rep. 302, and *Coxe Bros. & Co. v. Lehigh Valley R. Co.* 4 I. C. C. Rep. 535, 3 Inters. Com. Rep. 460. Those cases are in no respect similar to this. In both the common carrier was also the owner of extensive coal fields, and indeed it had become a common carrier largely for the purpose of trans-

porting the product of those mines to market. This state of things existed before the passage of the Act, and had no reference to the Act. Unless the carrier was permitted to transport its coal, the result would be in effect the confiscation of its property, and to order it to charge itself with a particular rate would merely result in a matter of bookkeeping. Under these circumstances it was held that the only remedy was to inquire whether the rate charged the complainant was a reasonable one. In the case under consideration the grain was not property which the carrier had purchased for use in or about its business or with a view to its ownership, but was property which it had bought for the express purpose of securing the right to transport it, and thus evade the law which would have applied to its transportation had it been owned by any other party. In those cases there was a permanent condition which must be met; in this a temporary unlawful practice which should be stopped. We believe that the powers of the Commission are adequate to that end and that they should be exercised.

In accordance with these views the following order is made:

Ordered, that the Chicago Great Western Railway Company be and is hereby notified and required to wholly cease and desist from the above practices, to wit, the transporting of grain for the Iowa Development Company, or for any other person or corporation owned, employed, or controlled by it, the said Chicago Great Western Railway Company, where such grain is bought at its instance and for the purpose of securing the transportation of the same, and where the rate paid is not the published tariff, but ultimately and in fact the profit upon the transaction; and to also wholly cease and desist from transporting grain owned by it, which was bought for the purpose of securing the transportation of the same, and for the transportation of which the rate paid is not the published tariff, but is ultimately and in fact the profit upon the transaction, as is more fully set forth in the foregoing statement of facts, which are hereby referred to and made a part of this order.

And it is further ordered, that a copy of this order and of the foregoing report and opinion herein be forthwith sent to said respondent, the Chicago Great Western Railway Company, in conformity with the provisions of the 15th section of the Act to Regulate Commerce.

WOLF BROTHERS
v.
ALLEGHENY VALLEY RAILWAY COMPANY AND
OTHERS.

Decided January 28, 1897.

Complainants' open-end envelopes, though made by a different and cheaper process than that employed in the manufacture of other open-end or side envelopes, and usually from an inferior grade of paper, are nevertheless made, used, and shipped like merchandise envelopes, and not like paper bags, which defendants place in a lower class; and rating complainants' envelopes in the higher class provided for merchandise envelopes is not unlawful.

Clarence Wolf, for complainants.

C. E. Gill, for Michigan Central R. Co.; West Shore R. Co.; and Delaware, L. & W. R. Co.

F. I. Gowen, for Lehigh Valley R. Co.

Geo. C. Greene, for Lake Shore & M. S. R. Co.; West Shore R. Co.; and New York Central & Hudson River R. Co.

W. A. Day, for Grand Trunk R. Co.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner :

The complainants allege that they are engaged in the city of Philadelphia, in the manufacture of an article which they style a paper bag; that the defendants are common carriers subject to the Act to Regulate Commerce; that in classifying the article manufactured by the complainants the defendants classify it as a merchandise envelope, while in point of fact it should be classified as a paper bag; that envelopes in less than carload lots are first class and in carload lots third class; while paper bags are third class in less than carload lots and fifth class in carload lots; by reason of all of which the complainants are unduly prejudiced and discriminated against.

The defendants admit that the complainants are shippers; that they are common carriers subject to the provisions of the Act, and that the classification is as stated by the complainants; but

they insist that the articles in question are not bags, but envelopes in fact, and properly classified as such.

Upon the issue thus formed a hearing was had, and from the testimony introduced upon that hearing the following facts appear:

The complainants are manufacturers of envelopes in the city of Philadelphia. In addition to the ordinary envelope they make what they call a paper bag and what the defendants call and classify as a merchandise envelope. The ordinary envelope is made to open at the side and is generally used for the purpose of transmitting various things through the mails. The envelope opening at the side is sometimes used for other purposes. Envelopes are also made opening at the end. These are sometimes used like the ordinary envelope, but are generally used for various commercial purposes in the place of wrapping paper, and are variously known when so used as druggist envelopes, glove envelopes, etc. In size they vary from $1\frac{1}{2}$ by $2\frac{1}{8}$ inches to $8\frac{1}{2}$ by $11\frac{1}{2}$ inches, most of them being of the intermediate sizes. Envelope manufacturers usually make both side and open-end envelopes, but it did not appear that there was any case in which they manufactured paper bags. Ordinarily, side envelopes and open-end envelopes are cut out with a die in the same way, but the complainants control a patent process by which open-end envelopes can be manufactured from a continuous roll of paper at a less cost than by the ordinary process with the die. They are usually made of a cheaper quality of paper, although this is not invariably the case.

The paper bag differs from the merchandise envelope in the same way that a bag differs from an envelope. The quality of the paper is usually inferior, and the price per pound at which they sell is usually less. In size they are much larger upon the average than the envelope, varying from 3 by 5 inches when folded to 8 inches by 2 feet. They are not manufactured by envelope makers, but their manufacture is an industry of itself.

The complainants insist that they are entitled to the classification asked for, because the open-end or merchandise envelope can be packed more closely than the ordinary envelope, and the complainants testified that one third more could be packed in the same space, and that a given bulk would weigh one third more.

It appeared that envelopes, including merchandise envelopes, are put up in the first place in paper boxes, and that these boxes are shipped in wood cases. Paper bags, upon the other hand, are counted out in hundreds or thousands, are subjected to severe hydraulic pressure, and are then done up in paper bundles, in which form they are shipped. As a result, the same bulk in paper bags weighs nearly twice as much as in envelopes. A car which can with difficulty be made to contain 20,000 pounds of envelopes will easily hold 36,000 pounds of paper bags.

We hold upon these facts that the complainant is not entitled to the relief prayed for. The article in question is made, used and shipped like an envelope. It is neither made, used, nor shipped like a bag. No classification can be absolutely just, and there may be some ground possibly for the complainants' contention, but, on the whole, we are not satisfied that the classification objected to works any discrimination against the complainants or this traffic which requires our interference. The complaint is dismissed without prejudice.

W. R. REA
v.
MOBILE & OHIO RAILROAD COMPANY.

Decided February 24, 1897.

1. Posting notices in a railway station that all rates are on file in the office of the station agent and may be examined upon application to such agent does not constitute compliance with the requirements of the Act to Regulate Commerce in respect to the posting by a common carrier of printed schedules showing its rates, fares and charges.
2. Evidence presented concerning defendant's alleged unlawful practice of charging second-class rates on beans, while tomatoes are carried by it at rates provided for third-class articles,—*Held*, not sufficient to justify an order requiring a change in classification; *Held*, further, that the present difference of almost one half in the rate on beans and tomatoes shipped from Verona, Miss., to East St. Louis, Ill., the actual cost of transportation being nearly the same, ought to be remedied.
3. Group rates of 70 cents on second-class articles and 44 cents on third-class applying within a distance of 271 miles from Prichard, Ala., to Verona, Miss., on shipments over an extreme distance of 640 miles to East St. Louis, and which in the next 200 miles fall to 30 cents, second class, and 22 cents, third class,—*Held*, *prima facie* unreasonable and unjustly discriminating against points within the group which are nearer to East St. Louis, and unlawful as to shipments from Verona.
4. Issuance of order in regard to defendant's group-rate practice suspended, and case held open to permit readjustment of rates by defendant, but with leave to complainant to file such application for an order in that respect as may be necessary, and with leave, also, to either party to introduce further evidence.
5. Complainant offered the defendant a carload of potatoes at Verona, Miss., and asked that the shipment be forwarded to Cleveland, O., *via* a connecting line with which defendant had at the time through billing arrangements and through rates, but defendant's agent refused to receive and route the shipment in accordance with such direction, and complainant was thereby damaged to the extent of one hundred dollars. *Held*, that complainant was entitled to have his merchandise carried over the route which he directed, and that the failure of defendant to receive and forward the shipment accordingly was a discrimination against complainant in violation of the Act to Regulate Commerce. Reparation ordered.

W. L. Clayton and F. L. Kincannon, for complainant.
E. L. Russell and R. P. De Shon, for defendant.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

The complaint alleges that the defendant has violated the Act to Regulate Commerce in the following particulars:

1. That the defendant has failed to post in its station at Verona, Miss., schedules of its rates and charges as required by the 6th section.

2. That it did publish a tariff and classification and that according to the same all vegetables, mixed or otherwise, in carload lots, were 6th class, or, if at owner's risk, Class D; that the complainant shipped one carload of vegetables over the defendant's road upon this classification and that he attempted to ship other carloads upon subsequent occasions, but that the defendant refused to give that rate and exacted from him a higher and different rate.

3. That the tariff rate upon beans and peas over the defendant's line from Verona, Miss., to East St. Louis, Ill., was 70 cents per hundred pounds, those articles being second class, while the rate upon tomatoes, cucumbers and cantaloupes, shipped in the same car, between the same points, at the same time, was 44 cents per hundred pounds, those articles being classified as third class; that in point of fact there was no difference in the cost of transporting beans and tomatoes, and that the complainant, as a shipper of beans, was thereby discriminated against.

4. That the defendant's rates on vegetables from Verona to East St. Louis were unjust and unreasonable in themselves.

5. That the defendant's rates upon vegetables gave undue and unreasonable preference to large shippers at Humboldt, Tenn., and at various other points, to the prejudice and disadvantage of the complainant as a shipper from Verona.

6. That the defendant had refused to route the vegetables of the complainant by the most direct route to Terre Haute and Indianapolis, Ind., Danville, Ill., Cleveland, Ohio, and Pittsburg, Penna.

7. That the complainant in June, 1894, had a carload of Irish

potatoes at Verona which he wished to place upon the market and for which he had an offer of an advance of \$2.75 per barrel if they could be routed to Cleveland, Ohio, by the "Big 4" route, but that the defendant refused to forward them by that route or by any other route except *via* East St. Louis, and that the complainant was forced in consequence to ship said potatoes to Cincinnati, Ohio, and thereby sustained a loss of \$100.

8. That the complainant made shipments of vegetables to Terre Haute, Ind., and Danville, Ill., and that said shipments were never delivered at the point of destination.

The defendant by its answer replied to these various charges in their order :

1. It admitted that it had not for some time past kept posted in its station at Verona printed copies of its schedule of rates and charges, but asserted that it had kept posted in conspicuous places in that station, placards whereby notice was given to the public that all interstate and other rates were on file in the office of the station agent and might be examined upon application to said agent, and that it had been forced to adopt this expedient by reason of the fact that the schedules which it had attempted to keep posted in obedience to the law were repeatedly torn down, so that it had become impossible to keep the schedules themselves posted.

2. The defendant averred that the basis of its schedule of rates and charges at the time in question was its classification No. 67, which was a reproduction of the classification of the Southern Railway & Steamship Association, with certain modifications; that by one of these modifications "vegetables, mixed or otherwise, carload lots, should take the 6th class rate, and, at owner's risk, the D class rate;" but that this classification did not apply to the transportation of vegetables between points upon the defendant's own line nor to any other points except those marked "GG," and that the points to which the complainant had desired to ship his vegetables in carload lots were not entitled to the benefit of this classification. That the station agent of the defendant at Verona had shipped for the complainant one carload of vegetables at this rate under the apprehension that he was entitled to it, but that before he offered the next carload for shipment, its agent had been informed that the complainant was not

entitled to that rate and had refused to ship other carloads for him for that reason.

3. The defendant denied that there was any discrimination in classifying beans as second class and tomatoes, cucumbers and cantaloupes as third class, for the reason that beans were more bulky and more perishable than the other articles referred to.

4. The defendant denied that its rates from Verona to East St. Louis were unreasonable.

5. It further denied that any undue or unreasonable preference was given to shippers at Humboldt, or other points, although it admitted that the rates from Humboldt were somewhat less than from Verona.

6. The defendant averred that, as a rule, it routed shipments of vegetables to their destinations by the routes desired, provided the defendant had any traffic arrangements with such roads, but insisted that during a great portion of the vegetable season of 1894, that being the season in question, the "Big 4" railroad would not receive perishable freight from the defendant at all, and that if the defendant had carried out the instructions of the complainant and attempted to send his freight that way, there would have been much trouble and delay.

7. The defendant referred to its answer in the foregoing paragraph for an answer to this charge of the complainant.

8. The defendant admitted that it had received certain shipments of vegetables from the complainant destined to the points named, and had transported such vegetables as far as East St. Louis *en route* to their destination, but asserted that, owing to the great strike, its connections refused to receive the freight at East St. Louis, and that it in consequence was obliged to and did sell the same in St. Louis and had tendered the complainant the net amount realized from that sale, which the complainant had refused to receive.

Upon the numerous issues thus formed, testimony was taken at Tupelo, Miss., May 18, 1895, both the complainant and the defendant being represented. That testimony is too indefinite to warrant any finding of fact whatever upon many of the issues involved and is unsatisfactory as to nearly or quite all of those issues, but it seems to fairly establish the following facts, which are found:

First: The defendant did not post in its station at Verona printed schedules as required by the 6th section of the act, but did, in lieu thereof, post in conspicuous places a conspicuous notice to the effect that all interstate and other tariffs, both freight and passenger, were on file in the office of the station agent and might be examined upon application to him. The reason for this was that the defendant had attempted for some time subsequent to the taking effect of the Act to Regulate Commerce to keep schedules posted as required by that Act, but had been unable to do so, for the reason that these schedules were repeatedly torn down and defaced. Finally, acting upon its own experience, and also upon the experience and practice of some other carriers, it introduced the system above mentioned. It did not appear that any inconvenience to the public had ever arisen on account of this method nor that any complaint had ever been made to the officers of the defendant from any source, and it did appear that a similar practice was in very general use upon other roads in that section and in other sections of the country. It would seem that this was the only practicable way of keeping the schedules on file at that place and that neither the interests of the complainant nor of the public were in any way prejudiced by the adoption of that method.

Second: The basis of the defendant's rates at the time in question was its classification No. 67. This classification was a reproduction of the classification of the Southern Railway & Steamship Association, with certain modifications. One of these modifications provided that mixed vegetables in carload lots took the 6th class rate, and if at the owner's risk, the rate of Class D, when destined to points marked on the printed tariffs "GG." This exception only applied to points so designated. The complainant, having a carload of mixed vegetables for shipment to some point, showed the station agent this exception and convinced him that under it he was entitled to that rate upon the carload in question. In point of fact he was not, since the point to which it was destined was not marked "GG" upon the printed tariff, but the station agent was of the opinion that he was, and so rated that carload. Before the complainant had another carload ready for shipment, the station agent was informed by his superior that this classification only applied to certain points, and when the

complainant tendered the next carload, he refused to give it that rate, but insisted upon rating it at the higher rate. By the terms of the printed tariffs in force at the time, complainant was not entitled to the rate which he received upon the first carload, nor was he entitled to a different or other rate than he actually received upon subsequent carloads.

Third: By the printed tariffs of the defendant, peas and beans were classified as second class and the rate from Verona to St. Louis was 70 cents per hundred. Tomatoes, cantaloupes and cucumbers took the third class rates, which was 44 cents per hundred. There was no testimony in reference to peas and there was practically no testimony in reference to cucumbers and cantaloupes. It appeared that the cost of raising beans and tomatoes was about the same, and that the price received in the market on the average was about the same. It further appeared that both vegetables were usually shipped in peck boxes, and that the defendant's agent at Verona was accustomed to bill eight of these boxes, whether of tomatoes or beans, as one hundred pounds; so that the shipper paid 70 cents for transporting eight boxes of beans from Verona to St. Louis while he only paid 44 cents for transporting eight boxes of tomatoes of the same size between the same points.

The defendant gave as a reason for placing beans in one class and tomatoes in another that beans were more bulky and more perishable. The testimony, including that on the part of the complainant, showed that tomatoes were actually heavier than beans, although in fact received as of the same weight by the defendant's agent at Verona, and the general freight agent of the defendant testified that the agent at Verona should not have accepted them as of the same weight. The testimony also showed that beans were somewhat more perishable than tomatoes. It further appeared that tomatoes and beans were formerly both classified as second class, but that the defendant had changed the classification by putting tomatoes from the second into the third class and thereby greatly reducing the rate, at the request of a committee of which the complainant was one.

Fourth: The defendant's road runs from Mobile, Ala. to East St. Louis, Ill., and the entire distance is about 644 miles. Verona is 273 miles north of Mobile and 271 miles north of Prichard.

Humboldt, Tenn., is about 128 miles north of Verona and Columbus, Kentucky, is 194 miles north of Verona. The rate on vegetables from all points between Prichard, which is 271 miles south of Verona, and Verona to East St. Louis is the same, being 70 cents for second class and 44 cents for third class. Beginning at Tupelo, the first station north of Verona, the rate is gradually reduced, being, at Tupelo, 65 cents second class, 42 cents third class; at Humboldt, 52 cents second class, 33 cents third class; and at Columbus, 30 cents second class, and 22 cents third class. Vegetables raised in the vicinity of Prichard, and generally those raised south of Verona, come into market earlier than those raised in the vicinity of Verona, and command for that reason a higher price. Those raised at Humboldt and points north of Verona come into market somewhat later and do not, for that reason, command quite as good a price. The defendant claimed that it had made the low rate from points near Mobile for the purpose of fostering the cultivation of vegetables at that point, and that by this rate it had built up a very large traffic in those commodities.

Fifth: The complainant testified that in the early part of June, 1894, he had for shipment from Verona a carload of Irish potatoes upon which he was offered an advance of \$2.75 per barrel, if he could route them to Cleveland, Ohio, over the "Big 4" road; that he requested the defendant's agent at Verona to route them by that line, but that the defendant refused to do so, and that for this reason he was obliged to send them to Cincinnati, where he could only get \$2.25 per barrel, and that he lost \$100 on the carload by reason of the fact that he was not able to send them to Cleveland by the desired route.

The freight agent of the defendant testified that during a part of the summer of 1894 the defendant had through billing arrangements with the "Big 4" from Verona to Cleveland, but that at a certain time the "Big 4" refused to receive perishable freight owing to the fact that the strike was on and it was unable to handle the traffic, and that he so notified the agent at Verona. The shipment in question was attempted to be made June 7, 1894. The letter of notification from the General Freight Agent to the agent at Verona was dated June 27, 1894, and the defendant introduced no testimony other than this as to when the "Big

4" declined to receive perishable freight. The defendant's agent at Verona would not testify certainly as to whether he did or did not refuse to bill the complainant's potatoes by that route.

The testimony upon this issue is not as definite as it should be, but we are inclined to think that it fairly shows, and we find that on June 7 the complainant offered the defendant a carload of potatoes at Verona and asked the defendant to bill it to Cleveland, Ohio, by the "Big 4" route; that the defendant then had through billing arrangements to that point with this road and might have so billed this carload; that its agent at Verona refused to do so, and that in consequence the complainant lost the sum of \$100 upon the shipment.

Upon these findings of fact the following conclusions are reached:

First: The method adopted by the defendant of posting its printed schedules was not a compliance with the law. The Commission has no power, if it were so disposed, to vary the requirement of the act in that respect. In this particular case the defendant seems to have acted in good faith and has, perhaps, done all it could do to comply with that provision of the statute. No injury nor inconvenience appears to have resulted either to the complainant or the public.

We do not feel called upon to make any order in the premises; but at the same time we wish to emphasize the fact that the requirement for the public posting of these rates is a most important part of the Act, and that the conduct of the defendant in this case is only excusable upon the ground that it was absolutely impossible to fulfill the letter of the law after an honest attempt to do so. We do not believe that there could be any valid excuse for the adoption of a similar practice in the great majority of instances. The destruction of these schedules is usually due to thoughtlessness rather than malicious intent, and if the carrier would bind up those intended for public inspection in some permanent form, as suggested in Appendix 2 to the Third Annual Report of this Commission, thereby giving an idea of greater importance to the document, the effect would probably be to prevent their defacement. Under no circumstances could there be any excuse for a failure to post changes in tariffs when made.

Second: The station agent of the defendant at Verona made a mistake in shipping the first car of mixed vegetables for the complainant. The complainant was not entitled to as good a rate as he received upon that shipment and it does not appear that he was entitled to a better rate, according to the tariffs in force, upon the carload shipments which he subsequently made. The mistake was in favor of the complainant and of course he is entitled to no benefit by reason of it here.

Third: The complainant claims that beans and tomatoes should go in the same class, and that the defendant, by putting beans in the second class at a rate of 70 cents per hundred, while tomatoes go third class at a rate of 44 cents per hundred, has discriminated against the complainant as a shipper of beans.

An exact classification is impossible. Unless the number of classes is infinitely increased there must always be articles in respect to which it will be very difficult to determine into which of two classes they should fall. If the elements which fix the class are substantially the same in case of two articles, then those articles should, as a matter of law, be classified alike, and to put one in one class and another in another class would be a discrimination and a violation of the act, no matter what the purpose of doing it might be. It appears here that beans and tomatoes are both shipped in peck boxes and that the defendant's agent at Verona was accustomed to receive and bill the same number of boxes for one hundred pounds whether of beans or of tomatoes, so that the complainant, as a shipper of beans, was obliged to pay 70 cents for transporting eight boxes of his commodity to East St. Louis while the shipper of tomatoes was only obliged to pay 44 cents for transporting eight boxes of his commodity, the nominal weight being the same and the value about the same. If this were all there was of the testimony we might hold that beans ought to be rated third class with tomatoes, but the defendant's testimony tends to show that beans are more perishable and it appears, in part from the complainant's testimony as well as that of the defendant, that tomatoes are in fact heavier than beans. It also appears that tomatoes were formerly second class and that they were made third class after considerable effort upon the part of shippers, including the complainant, from which it would seem that whether they ought to be second or third class was a debata-

ble question. We do not think that the practice of the defendant's agent at Verona in receiving tomatoes at less than their actual weight, ought to conclude the defendant in the matter of its classification and, on the whole, we do not feel justified in disturbing the classification as it now stands, although the testimony strongly indicates that it ought to be done, and although we should perhaps do so upon a more full presentation of the case. The present difference of almost one-half in the rate on beans and tomatoes, when the actual cost of the transportation is nearly the same, ought to be remedied.

Fourth: The complainant insists that the defendant by making a group rate from Prichard to Verona, a distance of 271 miles, to East St. Louis discriminates against Verona as in favor of points farther south and insists that the shipper from Prichard enjoys the benefits both of an earlier market and of the same rate for a much greater distance. The only reason which the defendant gives for this rate is that rates from Mobile are largely determined by those from New Orleans and that the rate in question was originally made for the purpose of developing the vegetable industry along the southern portions of its road. We have no other facts before us.

There are probably circumstances under which a group rate of this kind might be justifiable. It is possible that this particular rate, when all the facts and circumstances appear, may be justifiable; but we think that in a total haul of 640 miles, a rate which for the first 271 miles is the same and which in the next 200 miles falls from 70 to 30 cents upon second class and from 44 to 22 cents upon third class is *prima facie* unjust and unreasonable and a discrimination against the nearer points in the group; that in the present case the rates from Verona of 70 cents on second class and 44 cents on third class are unreasonable and unjust and discriminating as to Verona.

At the same time we are not furnished with the necessary information to determine what would be a reasonable rate from this point, and we have concluded to make no order in the matter for the present, but to rely upon the defendant to so adjust its rates in accordance with this suggestion as may be reasonable and just, holding the case open with leave to the complainant to apply for an order in this respect and with leave to either party to introduce further testimony, if so advised.

Fifth: It would seem clear that the complainant is entitled to damages upon the findings of fact in respect to this item, provided the Commission has jurisdiction to award reparation in such a case.

In *Macloon v. Chicago & N. W. R. Co.* 5 I. C. C. Rep. 84, 3 Inters. Com. Rep. 711, it appeared that the complainant was a shipper of coal over the railway of the defendant; that his coal sheds were not situated upon the line of the defendant, but upon the line of another railway company, and that there existed an arrangement between the defendant and that railway company by which the defendant was accustomed to switch cars coming over its line to the sheds of the complainant and also to the sheds of other shippers situated upon the line of the latter railway company, for a given charge; that the defendant had refused to switch two cars of the complainant to his sheds unless the complainant would promise to pay demurrage after a certain number of hours, while it did not exact a similar promise from other shippers similarly situated. It was held that it was the duty of the defendant in that case to treat all shippers alike and to switch the complainant's cars upon payment of the switching charge, without exacting from him a promise to pay demurrage which it did not exact from other shippers similarly situated, and that this Commission might award him whatever damages accrued by reason of that discrimination. The damages were not actually awarded in that case, for the reason that the testimony did not sufficiently show what those damages were.

The case of *Pankey v. Richmond & D. R. Co.*, 3 I. C. C. Rep. 658, 3 Inters. Com. Rep. 33, was this: The complainant shipped certain boxes of books from Troupe in the State of Texas to Fort Lawn, South Carolina. He directed the shipments to be made *via* Vicksburg, Miss., and the bill of lading so specified. It appeared that there were two routes through Vicksburg to Fort Lawn and that the charges were more by one route than they would be by the other. The shipper directed the goods to be sent by the cheaper route. They were in fact sent by the more expensive route, and the complainant, upon their arrival at Fort Lawn, declined to receive them, for the reason that an improper freight charge was demanded.

The Commission held that, since there was nothing in the

shipping directions upon the way bill to indicate by what route they should go, the carrier at Fort Lawn might retain the goods until the proper charges, according to the route by which they had come, had been paid. It was further held, however, that it was the duty of the agent of the initial carrier at the point where the goods were received, to route them by the less expensive route, in accordance with the directions of the shipper, and that for his failure to do so, such initial carrier was liable to pay, by way of damages, the difference in rate between the two routes, and an award of damages against such initial carrier was accordingly made. It did not appear that there was any through rate from Troupe to Fort Lawn.

Without inquiring whether this last case, upon its peculiar facts, was correctly decided, we think that the principles which underlie these two cases, namely, that the shipper may control the route by which his merchandise shall go, and that the carrier must treat, in this respect, all members of the public alike, are correct, and that they control the present case. Here was an established published rate from Verona to Cleveland. Presumably that rate and that route were open to the public. When the complainant directed the defendant's agent to route his carload of potatoes that way, it was the business of that agent to do so, and his failure to do so was a discrimination against the complainant, which amounted to a violation of the Act to Regulate Commerce.

We think, too, that upon the facts as they appear, the damages which the complainant is found to have sustained were the proximate result of this illegal act of the defendant, and that he is entitled to an order for the payment of one hundred dollars.

W. H. BOYER & CO.

v.

CHESAPEAKE, OHIO & SOUTHWESTERN RAILWAY
COMPANY, OHIO & MISSISSIPPI RAILWAY COMPANY, BALTI-
MORE & OHIO RAILROAD COMPANY, ILLINOIS CENTRAL RAIL-
ROAD COMPANY.

*January 8, 1895, Hearing had at Washington, D. C.—January 20, 1897, Illi-
nois Central Railroad Company made a party defendant.—February 15,
1897, Answer of Illinois Central R. R. Co. filed.—Decided February 27, 1897.*

The defendant carriers charged 29 cents per 100 pounds on cotton-seed meal from Memphis to Philadelphia, and 34 cents from Dyersburg, a shorter-distance intermediate point on the same line. After hearing, the line or road of one of the companies complained against passed into the control of, and was being operated by, a company not a party to the proceeding. This company on being made a party answered that it had put in effect the same rate, 26 cents, from both Memphis and Dyersburg, which on further investigation was found to be the fact.

Held, the cause of complaint being removed, the statute substantially complied with, reparation was made. No order was necessary, and the case was dismissed.

Charles S. Grubbs, for Chesapeake, Ohio & Southwestern Ry. Co.

Hugh L. Bond, for Baltimore & Ohio R. R. Co., and Ohio & Mississippi Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner* :

Complainants state that the three first above-named defendants charge and receive 34 cents per 100 pounds for the transportation of cotton-seed meal in carload lots from Dyersburg, Tennessee, to Philadelphia, Pennsylvania, while they charge a lower rate of 29 cents per 100 pounds from Memphis, Tennessee, which is 70 miles more distant than Dyersburg from Philadelphia; and complainants pray that said defendants be required to answer; that after hearing and investigation they may be ordered to desist from said violations of the Act to Regulate Commerce; that they be further ordered to make no charge in excess of 29 cents per 100 pounds in carloads on cotton-seed meal shipped from Dyersburg to Phil-

adelphia, and for such other order as the Commission may deem necessary in the premises.

The separate answer of the Chesapeake, Ohio & Southwestern Railroad Company says that its road does not connect with the roads of its said codefendants, nor make a continuous through line from either Memphis or Dyersburg to Philadelphia; that the rate on cotton-seed meal in carloads by all lines, whether rail or water, or partly by each, from Memphis to Philadelphia is 29 cents per 100 pounds, and is so made by reason of the existence of water as well as rail transportation between these cities; that Dyersburg is a way station on this respondent's road, between which station and Philadelphia no such competition exists, and that the rate of 34 cents is made up of this respondent's local rate from Dyersburg to Louisville, Kentucky, and the through rate thence to Philadelphia, and "is a fair, just and reasonable rate, and is not and cannot be measured by the through and competition rate enforced by the water routes at and from Memphis,—Memphis being a trade center twenty times the size of Dyersburg in point of population, and doing a business in cotton-seed meal as well as in other traffic, many hundreds of times larger than Dyersburg."

The Ohio & Mississippi Railway Company, answering separately, says:

"3. This defendant admits that it and other railroad companies carry certain freight by continuous transportation from Memphis and Dyersburg, in the State of Tennessee, to Philadelphia, in the State of Pennsylvania; but says that the circumstances attending transportation from said points are very different.

"This defendant is a party to a through freight line between Memphis and Philadelphia, with other railroads, and the through freight rate on cotton-seed meal in carload lots between those points under the joint tariff of the companies parties thereto is 29 cents per 100 pounds.

"There is no through freight line between Dyersburg and Philadelphia; but the Chesapeake, Ohio & Southwestern Railway Company charges its local freight rate to Louisville, Kentucky, on cotton-seed meal in carload lots; and from Louisville, where said meal first reaches this defendant's road, to Philadelphia, this defendant charges the regular rate of 23 cents per 100 pounds under its eastbound tariff.

"4. The shipments from both places are delivered to this defendant at Louisville, but in the case of the shipment from Dyers-

burg this defendant has no interest in or control over the rate from Dyersburg to Louisville, and gets no part of it.

"5. This defendant further says that between Memphis and Louisville there is competition for freight traffic by water by way of the Mississippi and Ohio rivers, and that the through freight rate between Memphis and Philadelphia is made partly with reference thereto; but that Dyersburg is an inland city, and that freight shipments from there are not subject to competition by water.

" * * * And respectfully insists, that the rates mentioned are reasonable and proper, and constitute no violation of any provision of the Act to Regulate Commerce; and prays that the complaint in this proceeding be dismissed."

The material part of the answer of the Baltimore & Ohio Railroad Company says:

"3. In answer to the allegations in the third paragraph of the petition, this respondent says that on September 20th, 1893, the Southern lines issued joint freight tariff No. 7, making the rate on cotton-seed meal in carloads, from Memphis to Philadelphia, 29 cents per 100 pounds, as will appear by copy of said Tariff No. 7 on file with the Commission; that there is also in effect a rate from Louisville to Philadelphia of 23 cents per 100 pounds on cotton-seed meal in carloads; that the rate from Dyersburg to Philadelphia, mentioned in the petition, is made by adding the local rate from Dyersburg to Louisville (11 cents per 100 lbs.) to the rate from Louisville to Philadelphia (23 cents per 100 lbs.).

" * * * This respondent is informed and believes that the rates from Memphis are controlled by the water competition at that point, and that the difference in rates, complained of in the petition, is due to that competition."

The case was set down for hearing at Washington, D. C., January 8, 1895. The complainants were not represented. The respondents were present with counsel, and called the general freight agent of the Chesapeake, Ohio & Southwestern Railroad Company, the initial carrier from Memphis and Dyersburg, as a witness; and on investigation the facts were ascertained to be:

1. The complainants are brokers in oils and cotton-seed products, doing business at Philadelphia, Pa., where they receive shipments of cotton-seed meal from Dyersburg. The defendants, and each of them, are common carriers between points in different States. The line of the Chesapeake, Ohio & Southwestern Railroad Company extends from Memphis, Tenn., to Louisville, Ky. A line of the Ohio & Mississippi Railway Company runs between

Louisville, Ky., and Cincinnati, Ohio, and a line of the Baltimore & Ohio system runs between Cincinnati and Philadelphia, Pa., by way of Baltimore. Dyersburg is on the Chesapeake, Ohio & Southwestern R. R., 70 miles nearer to Louisville over the same line than Memphis, and cotton-seed meal is not shipped from that point by water to eastern points.

2. The rates from Memphis by all lines, including the lines of the three defendants first named, to Philadelphia, was at the time of the investigation 29 cents per 100 pounds on cotton-seed meal. No joint through rate from Dyersburg to Philadelphia had been published. The rate from Dyersburg to Philadelphia was 34 cents per 100 pounds, made up of a local rate from Dyersburg to Louisville over the Chesapeake, Ohio & Southwestern Railroad of 11 cents per 100 pounds, and a through rate thence to Philadelphia over the lines of the other two defendant companies, of 23 cents per 100 pounds.

3. Formerly, when cotton-seed meal was less valuable and classified as fertilizer, it had a rate of 11 cents per 100 pounds to Louisville from Dyersburg over the Chesapeake, Ohio & Southwestern R. R. When new uses were found for this product and its value was greatly increased, it was taken from the fertilizer class and given a commodity rate of 17 cents per 100 pounds, but on through business, though the Chesapeake, Ohio & Southwestern disclaimed having, or being a party to, a through rate from Dyersburg, it accepted 11 cents per 100 pounds to Louisville.

4. From Memphis, there is water transportation by the Mississippi and Ohio rivers to Cincinnati, by which cotton-seed meal was carried for 12 cents per 100 pounds, and from Cincinnati by rail to Philadelphia the rate was and is 17 cents per 100 pounds, making the through rate from Memphis to Philadelphia by rail and water over this route 29 cents.

5. From Memphis, the Mississippi River affords water transportation to New Orleans; and a rail rate was in existence of 9 cents per 100 pounds on cotton-seed meal to that point, from which the rate by steamship to New York was 15 cents per 100 pounds, making a through rate from Memphis to New York of 24 cents per 100 pounds. A small per cent of the product was carried by this route. What the rate was to Philadelphia by way of New Orleans, if there were any carrying from Memphis by that route, did not appear.

6. The local rate over the Chesapeake, Ohio & Southwestern R. R. from Dyersburg to Memphis on cotton-seed meal was $6\frac{1}{2}$ cents per 100 pounds; this, with the above rates *via* New Orleans, would give Dyersburg a $30\frac{1}{2}$ cent rate to New York by that route. The only shipments of considerable volume from Memphis to Philadelphia are cotton, cotton-seed products and lumber; and of these, the larger part is carried by rail. Philadelphia ships little freight through New Orleans to Memphis, the least expensive route, yet a large per cent of such freight leaves Philadelphia by water for Norfolk or Savannah, and goes thence by rail to Memphis, with better time than by the New Orleans route, and better rates than by any other than the New Orleans route.

It appearing after investigation that the road of said Chesapeake, Ohio & Southwestern Railroad Company was operated by the Illinois Central Railroad Company, this latter company was by order of this Commission made a party defendant, served with a copy of the complaint, and required to answer. This company, the Illinois Central, answering as required by the Commission, says:

“* * * It denies that at the time of the filing of the complaint herein it had any supervision over or any interest whatsoever in the line known as the Chesapeake, Ohio & Southwestern Railway, and it can therefore neither affirm nor deny any of the allegations set forth by the complainants.

“3d. This respondent admits that it now acts as agent for the owner of the line formerly known as the Chesapeake, Ohio & Southwestern Railway, one of the defendants in this proceeding, and as such agent that it has put into effect the same tariff of rates on cotton-seed meal, in carloads, from Dyersburg, Tennessee, as from Memphis, which tariff of rates is lower than that complained of. *Vide* Illinois Central (Agent) G. F. O. 731 A—I. C. C. 239, October 21st, 1896, making rate on cotton-seed meal from Dyersburg to Philadelphia 26 cents per 100 pounds, same as from Memphis,” and “prays that the proceeding against it in this case be dismissed.”

On further investigation it is found that the Illinois Central Railroad Company operating the line of the Chesapeake, Ohio & Southwestern Railroad Company has established and put into effect the same rate,—26_cents per 100 pounds,—in carloads on

cotton-seed meal from both Memphis and Dyersburg, Tenn., to Philadelphia, Pa. The rates being no longer in conflict with the statute and the grievance complained of having been corrected, the carriers have made reparation and no order will be issued.

The case will be dismissed.

IN THE MATTER OF ALLEGED VIOLATIONS OF THE FOURTH
SECTION OF THE ACT TO REGULATE COMMERCE
BY ATCHISON, TOPEKA & SANTA FÉ RAILWAY COMPANY AND
THE RECEIVERS THEREOF, AND OTHERS.

Decided March 1, 1897.

No disturbance of rates, secret or open, creates such dissimilarity of circumstances and conditions under section four of the Act to Regulate Commerce as will justify either of two or more competing carriers subject to that Act in charging more for the short than for the long haul, without an order of the Commission.

Kenna & Dunlop for Atchison, Topeka & Santa Fé System and Receivers.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner* :

Previous to October 7, 1895, the rate on fifth-class freight from Chicago to Colorado points by all competing roads had been 92 cents per 100 pounds in carload lots. By a tariff regularly published, taking effect as of that date, the receivers of the Atchison, Topeka & Santa Fé Railway reduced the rate to 50 cents. Other companies at once followed this by reductions to 38 cents October 13, and 30 cents October 14. In making these rates some of the carriers so arranged their tariffs to intermediate points as not to conflict with the fourth section. Most of them did not. The receivers of the Santa Fé road made no attempt in their tariff of October 7th or in subsequent tariffs to do so, but upon the contrary the receivers of that railroad insisted, both by their answer in this case and by the sworn testimony of one of the Receivers upon the hearing, that the rates, although lower to Colorado points than intermediate points, were not in violation of the fourth section, for the reason that the circumstances and conditions were so dissimilar that they were justified in making the lower rate for the longer haul, dissimilarity of circumstances and conditions being found in the fact that there was then prevalent a rate war between different competing lines to those points.

The rates were soon restored to their normal condition, so that

the question has ceased to be a live one, nor would it deserve any further consideration from us were it not for the fact that it was seriously claimed by a prominent railroad manager that the act of the Santa Fé under the circumstances was not in violation of law. Since the same condition of things may, and is almost certain to, arise from time to time, we deem it proper to express our views upon that claim.

As we understand the position of Mr. Walker, it was as follows: As the receiver of the Santa Fé system he stood charged with the preservation of its properties; he found in the management of those properties that the traffic from Chicago to Colorado points, which belonged to and had formerly passed over his lines, was being diverted, and he became satisfied that this was owing to the irregular practices of his competitors in accepting less than the published rates. He became convinced that the only way in which this secret and unlawful competition could be met was by meeting the rate which they made, and he accordingly did so. The rate which he established to Colorado points was, as he well knew, an unremunerative rate, and was only established to meet the immediate necessities of the occasion and as a temporary expedient. The rates to intermediate points had been substantially the same for many years, and were just and reasonable. He did not believe there was any equitable reason why these rates should be reduced and the revenues of his system diminished because he found it necessary to make a low rate for the purpose of checking unlawful competition. It was the fact of this unlawful and secret competition which justified him in making the lower rate for the longer haul by creating dissimilar circumstances and conditions.

In the case *Re Louisville & N. R. Co.* 1 I. C. C. Rep. 31, 1 Inters. Com. Rep. 278, it was held by the Commission that the fourth section did not apply where the circumstances and conditions were dissimilar, and that in the case of such dissimilar circumstances and conditions the carrier might lawfully charge more for the short than for the long haul. Under this decision, which was upon the most elaborate consideration of the questions involved, two classes of cases might arise with reference to the fourth section: first, those in which the circumstances and conditions were dissimilar, to which the section did not apply; sec-

only, those of an unusual or extraordinary nature, to which the section did apply, and in which the charging of the greater rate for the shorter haul would be unlawful unless the Commission upon investigation granted an enabling order. The first class did not fall within the inhibition of the section at all, and it was not, therefore, necessary for the carrier to consult the Commission, nor indeed could it properly consult the Commission in advance as to whether the case was or was not within the section. It must assume the responsibility of deciding that question for itself first, and if any party deemed himself or itself aggrieved by the decision of the carrier, then upon complaint to the Commission it would determine whether the dissimilarity existed. In the second class, application must be made to the Commission in the first instance, and the charging of the greater sum for the shorter haul would be illegal without the order of the Commission thereto, although the circumstances might be such that the Commission would finally grant such order.

It should be noticed that the matter under consideration does not fall within the second class. The Santa Fé road and its receivers have never applied to the Commission for any relief from the operation of the fourth section. It is quite possible that the facts set forth in their answer, or detailed in the testimony of Mr. Walker, might be such as would justify and induce us, upon being satisfied of the existence of those facts, to grant relief, but that relief never has been asked for, and no question of that sort arises.

In the *Louisville & Nashville Case* the Commission attempted to point out what would be the dissimilar circumstances which would take the case out of the fourth section, and it enumerated three things: First, competition with water carriers not subject to the provisions of the Act; second, competition with railroads in foreign countries or situated wholly within a single State, and not therefore subject to the provisions of the Act; third, special and peculiar cases of competition between carriers which were subject to the Act.

In *Re Chicago, St. P. & K. C. R. Co.* 2 I. C. C. Rep. 231, 2 Inters. Com. Rep. 137, it was held that the fact that a competing railroad subject to the provisions of the Act made a rate which was below the actual cost of transportation did not create such a

dissimilarity of circumstances as would justify the defendant in meeting this rate without reducing its rates at intermediate points. In *Railroad Commission of Georgia v. Clyde SS. Co.* 5 I. C. C. Rep. 327, 4 Inters. Com. Rep. 120, the *Louisville & Nashville Case*, 1 I. C. C. Rep. 31, 1 Inters. Com. Rep. 278, was considered and its doctrines reaffirmed in the main. It was, however, held that competition between roads subject to the Act could under *no circumstances* afford such a dissimilarity of conditions as would justify the carrier in charging more for the shorter than for the longer haul *without an application to the Commission for relief*. This decision has never been departed from by the Commission since, nor has its correctness ever been questioned by any court of controlling influence. It must be assumed, therefore, at the present time, that mere competition between carriers subject to the Act cannot under any circumstances create the necessary dissimilarity.

This does not, however, quite go to the claim of the defendant. While Mr. Walker intimated an opinion that the courts might ultimately hold that such competition would amount to dissimilar conditions, he admitted that upon the present state of the law, no competition, so long as it was open, would justify a departure from the fourth section; but he insisted that the secret violation of the law by the making of lower rates did create such dissimilarity as permitted him to meet those rates. His argument was that, just as competition with carriers which cannot be subjected to the Act creates the necessary dissimilarity, so competition which is not and, as he said, could not practically be, controlled by the Act, comes to the same thing.

One objection to the acceptance of this view lies in the fact that it suffers each carrier to determine for itself when this violation of law exists, and when, therefore, it may violate the law upon its own part. The history of all rate wars is substantially the same. Some railroad official, of greater or less degree, concludes that his line is not obtaining its fair proportion of competitive traffic, and is "satisfied" or "believes" that the reason for this is the unlawful practices of his competitors. Thereupon, in alleged self-preservation, he reduces the rate himself. The result is the demoralization of rates over a greater or less territory, with all its attendant evils to the public and the loss of

large sums to the railroads involved. While no doubt is suggested as to the ability and judgment with which the railroads of this country are operated, we should still be loath to put such a construction upon the Act as would leave it to the inner consciousness of each railroad manager to determine for himself whether an essential provision of the law should or should not be observed. We think it accords much better with the intent of the Act to hold that application must be made in the first instance to the Commission, which was created for the express purpose of deciding, as an impartial tribunal, upon investigation, whether the facts do actually exist, and, if so, whether they are sufficient to justify the suspension of the rule of the fourth section, and to what extent.

Apart from this consideration of utility, we cannot assent to the proposition contended for. Stripped of its various embellishments, it comes to this, that because one party violates this statute secretly in one particular, a second party may violate it openly in another particular. This proposition would sound ridiculous if it proceeded from a less eminent authority; it is sufficiently startling from any source. Applied to laws in general, it would result in complete anarchy. That the Act to Regulate Commerce is not enforced in a given instance, or cannot be enforced as a general thing, would, if true, be a reason why it should be amended; it is no excuse for its violation.

And this suggests the further question: Why was not the law enforced in this particular instance? The claim is that competing carriers between Chicago and Colorado points were secretly accepting less than the published rates. Of this fact the Commission had, and could have, no knowledge until brought to it from some outside source. It must assume that the carriers are complying with the law and are receiving the published rates. The Santa Fé road communicated nothing of its suspicions to this Commission, and made no application to it for assistance or relief. It undertook to correct the evil by its own action.

Mr. Walker was inquired of why he had not furnished the Commission with what information he had. His answer in substance was that it would have done no good, that in the then state of the statute and of public opinion the law could not be enforced.

His testimony upon that point is instructive. We give it in his own words :

"Mr. Walker: That is one idea. It is very difficult to get the absolute facts which are considered as necessary by the courts to punish railroads that are suspected, and the fact about it is, the machinery of the law (nobody is to blame for it that I know of) is not adequate. It has not been satisfactory, it has not resulted in reaching the results, the objects that were intended; and, further than that, I do not believe that it ever can be under the present conditions."

Later in his examination, the following questions were asked and answered :

"The Chairman: Then it would come back (and see if this is an unfair inference that I am going to draw now) to the question that the failure to enforce it now results from the unwillingness of the railroads to help.

"Mr. Walker: It results to a considerable extent from the reluctance of the railways to help.

"The Chairman: To have the penalties attached to the misdemeanors enforced against their rivals?

"Mr. Walker: Against their associates. That puts them in the position of being informers, and, as has been said, in this country an informer is worse than the criminal in the eyes of the public.

"The Chairman: If that is not done, how are any laws to be enforced?

"Mr. Walker: They are to be enforced and they are enforced when they have public sentiment with them and the sentiment of the parties who are to be benefited by their enforcement with them; in this case, both shippers and carriers.

"The Chairman: It is not the question of informing, then. It is simply a question of whether the railroad officials and people think that it is a subject on which they ought to give information?

"Mr. Walker: There is this further thing in connection with that. There is a general feeling on the part of the railway public that this law does not protect them, that it bears hardly upon them without according them any protection, that it takes away their rights and revenues and at the same time does not support them in what they are entitled to have and receive, that it is hostile and designedly hostile in its scope, and that it leaves out anything in the nature of protection to which I think they are as much entitled as the ordinary business man in their traffic."

Mr. Walker here very frankly states his position, which is this: I disobey the law, because it is not enforced. The law is not enforced because I, and other men in my position, decline to co-

operate in its enforcement. I decline to so co-operate because I do not like the law. That is to say, I disobey the law because I do not like it.

It is certainly true that the Act to Regulate Commerce is defective in many important respects, and that this Commission is powerless at many points where it ought to be effective. It is equally true that the law might be enforced, to a much greater extent certainly, if the railroads of this country would lend their influence thereto. If the receiver of the Santa Fé Road, instead of taking the law into his own hands, had given us the benefit of his hearty co-operation, the illegal practices of which he then complained could undoubtedly have been stopped in that instance and an example made of those who inaugurated those practices that would have gone far towards discouraging similar violations of law in the future. Whether he should so assist in the enforcement of the law was a question entirely for him as a man and a railroad manager. We make no criticism upon his course in deciding not to co-operate in supporting it, but we must decline to accept as a valid excuse for his violation of the law the fact that that law was disobeyed by other parties, when that disobedience arose from his own attitude towards it.

We conceive that Mr. Walker, as the receiver of the Santa Fé road, might, in the emergency which confronted him, adopt one of two courses. He might apply to this Commission, laying before it his knowledge and his suspicions. It would have been our duty to promptly investigate the matters brought to our attention. Under the recent decisions of the Supreme Court of the United States that investigation would have resulted in developing the actual facts, unless we are to assume that his competitors would have committed perjury. With the facts before us the practices complained of could probably have been stopped, the very fact of publicity would have gone far towards stopping them; at all events we should not have required Mr. Walker to sacrifice the properties of which he was in charge, but should have permitted him to make rates in disregard of the fourth section if, in our judgment, that was necessary to protect those properties.

If by reason of his impression that the supreme law of the land to which he, in common with all other good citizens, is sup-

posed to be subject, ought not to be enforced, he might, as he did, waive the benefit of its provisions, and seek to redress his fancied wrongs by resort to the *lex talionis*; but in that case he must proceed within the law, and if he found it necessary to make a disastrously low rate to a competing point, he must adjust his rates to intermediate points in accordance with the statute.

The exact point which we decide is, that no disturbance of rates, secret or open, creates such a dissimilarity of circumstances and conditions as will justify the carrier in charging more for the short than for the long haul without an order of the Commission.

THE BOARD OF RAILROAD AND WAREHOUSE COM-
MISSIONERS OF THE STATE OF MISSOURI
v.
THE EUREKA SPRINGS RAILWAY COMPANY.

Complaint filed January 29, 1895—Answer filed February 19, 1895—Testimony taken April 19, 1895—Decided February 26, 1897.

The through rate over a railroad 18½ miles long (10½ miles in Arkansas and 8 in Missouri) was \$1.85, 10 cents per mile. The local charges between the stations in Arkansas were on the basis of 5 cents per mile, any higher charge being unlawful under the statute of the State. On roads of this class in Missouri the rate authorized is 4 cents to the mile. The net earnings are in excess of a moderate return on the actual investments of the railway company, but are less than in former years. *Held*, that the through rate is unreasonable and unjust, and *Held*, further, that any through rate over the road in excess of \$1.20 (6½ cents per mile) is unreasonable and unlawful.

R. M. Walker, Atty. Gen. for the State of Missouri, for Complainant.

W. H. H. Clayton, for Eureka Springs Railway Company.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner* :

The complaint states that the defendant makes and exacts an aggregate charge of \$1.85 or 10 cents per mile for the transportation of through passengers between Seligman, Missouri, and Eureka Springs, Arkansas, while the local rate between the stations in Arkansas on defendant's road is 5 cents per mile; that between Waldon, a station in Arkansas, and Seligman, in Missouri, a distance of 9½ miles, the rate is nearly 15 cents per mile, while between Waldon and Eureka Springs, both in Arkansas, a distance of 9 miles, the rate is 5 cents per mile; that almost the entire passenger traffic of defendant's road is through travel between Seligman and Eureka Springs, and that the charges so in force on defendant's road are unjust, unreasonable, exorbitant and unjustly discriminating against the citizens of Missouri. Complainants request that the matter of their complaint be investigated and adjusted in such manner as may be found equitable and proper.

For answer, defendant admits that its aggregate or through rate is \$1.85 or 10 cents per mile, while its local rate between points in Arkansas is 5 cents per mile; denies that Waldon is a station at which passengers are received or taken on its line, and denies that it collects or charges 15 cents per mile between Waldon and Seligman or between any other points on its line. It states that it has no station in Missouri and but one regular passenger station in Arkansas on its line between Eureka Springs, Arkansas, and Seligman, Missouri, the terminal points; that this intermediate station, "The Narrows," at the crossing of White River, is about 6 miles from Eureka Springs and $12\frac{1}{2}$ miles from Seligman and is a boating and fishing resort for persons visiting Eureka Springs, which defendant has fitted up and made attractive by large investments to induce travel from the Springs over its line; that the statute of the State of Arkansas does not permit defendant to charge more than 5 cents per mile between these points, both being in the State of Arkansas; that the conditions between Eureka Springs and The Narrows are dissimilar and different from the conditions on any other part of defendant's line, and that it does not in any way discriminate against the citizens of Missouri or of any other state or place, and says that by agreement with the St. Louis & San Francisco Railroad Company, made before the construction of defendant's road, for the consideration of \$100,000, face value of defendant company's capital stock, and \$100,000, face value of its income bonds, and further in consideration of the building of defendant's road, said St. Louis & San Francisco Railroad Company "was to pay to defendant annually a rebate of ten (10) per centum of all of the passenger earnings of the said St. Louis & San Francisco Railway Company on all passengers delivered to, or received from, the defendant company coming from or destined to certain terminal and junctional points on the line of the said St. Louis & San Francisco Railway Company; said contract to run for the period of fifty (50) years.

"The average annual sum paid to the defendants since the construction of its said railway, on account of the said contract, amounts to four thousand and eighty dollars and twenty-six cents (\$4,080.26), which said sum has always been credited to its passenger earnings.

"That the said St. Louis & San Francisco Railway Company

is now insolvent, having been on the 23rd day of December, 1893, placed in the hands of receivers by the Circuit Court of the United States for the Eighth Circuit at the suit of its bonded creditors, and, as this defendant is informed, and alleges, the mortgages outstanding against it will soon be foreclosed and all of its property and franchises will be sold to satisfy its debts, after which, defendant is informed, the aforesaid contract will no longer be of force and effect and all payments under it will cease, thereby materially decreasing the revenue of the defendant on account of its passenger traffic." Defendant denies that the rates charged by it are unjust, unreasonable or exorbitant, and further states that if it should be compelled to reduce its passenger rates, its losses on the passenger service would be greater than they now are; that to continue its passenger business at a heavy loss will necessarily result in insolvency; and prays that the complaint be dismissed.

The case was heard at St. Louis, Missouri, and upon investigation the facts were found to be,—

1. The complainants, the Board of Railroad and Warehouse Commissioners of the State of Missouri, composed of H. W. Hickman, Chairman, James Cowgill, Joseph Flory, are authorized to make this complaint by the laws of the State of Missouri under the Act to Regulate Commerce.

2. The defendant railway company is a carrier of persons and property over its line of road from Eureka Springs, Carroll County, Arkansas, to Seligman, Perry County, Missouri, a distance of $18\frac{1}{2}$ miles, of which 8 miles are in Missouri and $10\frac{1}{2}$ miles are in Arkansas. Eureka Springs is a city of about four thousand inhabitants, situated in a mountainous and not very productive region. It is a health resort mostly frequented as such in the spring and summer months. Seligman, the only station on defendant's line in Missouri, is also a station on the St. Louis & San Francisco Railroad, and is a place of from 100 to 200 inhabitants.

3. Beside Eureka Springs and Seligman, the terminal stations, and The Narrows, the intermediate station, there is a flag station, Gaskins, on defendant's line, 3 miles from Eureka Springs and $15\frac{1}{2}$ miles from Seligman.

The passenger rates and distances between points on defendant's line are as follows :

BETWEEN					
Eureka Springs, Arkansas,	and Gaskins, Arkansas,	8	miles.....	\$	.15
"	"	"	" The Narrows,"	6	"30
"	"	"	" Seligman, Mo.,	18.5	" 1.85
Gaskins,	"	"	" The Narrows, Ark.,	8	"15
"	"	"	" Seligman, Mo.,	15.5	" 1.65
The Narrows,	"	"	" Seligman, Mo.,	18.5	" 1.50

Defendant has a spur or side-track about 9 miles from Seligman at Waldon, from which timber and stone are hauled over its road, but does not receive passengers there. No reason is found why passengers should not be carried from Waldon as they are from Gaskins or from The Narrows.

4. The year previous to the hearing of this case defendant carried between Eureka Springs and Seligman 14,608 passengers; between Eureka Springs and The Narrows 3,898 passengers, and between The Narrows and Seligman 117 passengers, or a total of 18,623.

On through passengers to Eureka Springs over the St. Louis & San Francisco and the defendant's roads from points beyond Seligman defendant receives the following rates shown in a circular of instruction issued by the St. Louis & San Francisco Railway Company :

FROM		One way. rate.	Round trip rate.	Division of round trip rates.	
				St. L. & S. F. Ry.	E. S. Ry.
St. Louis,	Mo.	11.10	12.50	10.53	1.97
Nichols,	"	3.85	7.00	3.82	3.18
Paris,	Tex.	9.90	10.00	8.23	1.77
Carthage,	Mo.	3.60	6.75	3.47	3.28
Vinita,	I. T.	5.65	10.50	7.25	3.25
Girard,	Kan.	4.90	8.75	5.63	3.12
Oswego,	"	5.00	9.25	6.01	3.24
Cherryvale,	"	5.80	9.75	6.81	2.94
Fredonia,	"	6.60	11.00	8.08	2.92
Severy,	"	7.35	12.00	9.14	2.86
Augusta,	"	8.70	14.00	11.18	2.82
Arkansas City,	"	8.90	15.00	12.05	2.95
Wichita,	"	9.15	15.00	12.13	2.87
Burton,	"	10.15	15.00	12.41	2.59
Lyons,	"	10.95	16.00	13.44	2.56
Ellsworth,	"	11.75	17.00	14.47	2.53

In a footnote to this circular of instructions it is provided that

"in division of one-way rates allow the Eureka Springs Railway Company an arbitrary of \$1.75."

5. The statute of the State of Arkansas contains the following provision :

"SEC. 1. The maximum sum which any corporation, officer of court, trustee, person or association of persons, operating a line of railroad in this State, shall be authorized to charge and collect for carrying each passenger over such line within this State, in the manner known as first-class passage is hereby fixed at the following named rates: On lines of railroad 15 miles or less in length, 8 cents per mile. On lines over 15 miles in length, and less than 75 miles in length, 5 cents. On lines over 75 miles in length, 3 cents per mile."

The statute of the State of Missouri contains the following provisions :

"SEC. 831. ROADS CLASSIFIED.—All railroads in the State of Missouri are hereby divided into three classes, to be known as class A, class B, and class C. Class A shall include all through or trunk line railroads. Class B shall include all the branch roads owned, leased or occupied by such through or trunk line railroad companies or corporations. Class C shall include all other railroads or parts of railroads owned, leased or occupied, or which may hereafter be owned, leased or occupied in this State, either wholly or in part. (Laws 1875, p. 113, Sec. 1.)

"SEC. 832. PASSENGER CHARGE REGULATED.—Any individual, company, or corporation owning, operating, managing or leasing any railroad or part of a railroad in this State, in the several classifications as herein prescribed, shall be limited to a compensation per mile for the transportation of any person with ordinary baggage, not exceeding 100 pounds in weight, as follows: In class A not exceeding 3 cents per mile, and in classes B and C not exceeding 4 cents per mile; provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of children of the age of twelve years or under, than one half of the rate above prescribed; and provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided. (Laws 1875, p. 113, sec. 2.)

6. The defendant has an arrangement or agreement with the

St. Louis & San Francisco Railway Company, made in 1882, and running for the period of fifty years, to induce the building of defendant's road; and a further consideration was the delivery to said St. Louis & San Francisco Railway Company of \$100,000, face value of the capital stock, and \$100,000, face value of the second-mortgage income bonds of the Eureka Springs Railway Company, for which, among other concessions and facilities afforded the defendant, is the following contract as stated in the testimony, and in the report of the defendant to the Commission:

"They pay us 15 per cent of their gross earnings derived from through and competing freight traffic interchanged each way at Seligman, Mo., and 10 per cent of their gross earnings derived from through and competing passenger traffic. Through traffic is such freight and passenger business as is interchanged at Seligman, Mo., originating beyond terminal stations or places upon the lines of the St. L. & S. F. Ry. Competing traffic is such business as originates at or beyond stations on St. L. & S. F. Ry. intersected or which may be intersected by railroads operated by other companies. St. L. & S. F. Ry. agree to furnish cars to E. S. Ry. Co. (defendant) for business interchanged when requested to do so at rates usual for such services. St. L. & S. F. Ry. is to pay to E. S. Ry. Co. in any one year only so much of such rebate or percentages mentioned as will together with the net earnings of E. S. Ry. make up or help to make up the sum of \$90,000, which sum is required to pay interest on its \$500,000 first-mortgage bonds (6 per cent), and interest at 6 per cent on \$500,000 second-mortgage bonds (incomes), and semi-annual dividend at 6 per cent per annum on its \$500,000 capital stock. Rebate or percentages to be rendered or settled semi-annually."

Under this agreement the defendant received from the said St. Louis & San Francisco road for the calendar year 1894 and has received annually since the construction of its road sums as follows:

Years.	Amount Rebate
1884.....	\$13,666.71
1885.....	11,739.89
1886.....	13,344.62
1887.....	18,519.20
1888.....	15,878.49
1889.....	12,594.32
1890.....	12,129.61
1891.....	11,975.89
1892.....	13,896.17
1893.....	13,988.89
1894.....	12,828.09

Of these sums the defendant credits \$4,080.26 as the average annual receipt for the last eleven years from passenger earnings. The president of the Eureka Springs Railway Company testified respecting this source of revenue, that the St. Louis & San Francisco road, "from which we get those rebates, is now in the hands of a receiver, under proceedings to foreclose the first mortgage on that road, and that road will soon be sold under decree of the court, after which time these rebates will cease, and we expect that they will cease this year."

COMPARATIVE STATEMENT OF ACTUAL EARNINGS AND EXPENSES.

Calendar Years.	TOTAL GROSS EARNINGS.	TOTAL EXPENSES.	NET EARNINGS.	Expenses % Gross Earnings.
1884	\$80,869.10	\$42,894.61	\$37,974.49	53.04
1885	75,719.56	29,755.69	45,963.87	39.29
1886	76,546.06	26,876.72	50,169.84	34.45
1887	96,278.32	31,320.12	64,958.20	32.53
1888	87,721.96	35,528.78	52,193.18	40.50
1889	78,471.67	34,877.18	43,594.49	44.45
1890	75,098.42	35,017.59	40,080.83	46.63
1891	74,678.23	33,987.60	40,690.63	45.51
1892	81,087.15	39,874.52	41,212.63	49.17
1893	78,405.08	38,385.48	40,019.55	48.96
1894	78,013.85	32,440.05	40,573.80	44.43
Annual Average.	\$79,808.12	\$34,587.12	\$45,221.00	43.33

In the year 1894 the defendant received \$1,453.56 for transportation of United States mails.

Defendant also received from the Wells Fargo Express Company \$130 per month, or for the fiscal year 1894, \$1,546.96.

The gross earnings of the defendant for the fiscal year	
1894 was	\$70,148.97
Less profit from tie purchases	2,058.12
Actual gross earnings	\$68,090.85
Cost of operating, including taxes	\$31,513.89
Net earnings	\$36,577.46
Interest paid, first mortgage bonds	\$30,000.00
Surplus	\$6,577.46

8. The basis for computing passenger earnings per train mile adopted by the Commission is by adding 25 per cent of miles run by mixed trains to the number of miles run by passenger trains.

On this basis the passenger revenue for 1894 was \$22,248.50. Estimating operating expenses on the same basis or in the same proportion the passenger traffic is chargeable with 64 per cent of the total expenditures, which, including taxes, amounted in 1894 to \$20,168.56, leaving a net balance of \$2,079.94 from passenger earnings. The freight earnings for the same year, 1894, were \$29,641.44. Charging against freight traffic balance of operating expenses, including taxes, amounting together to \$11,344.83, there is left a net revenue from freight traffic of \$18,296.61. These earnings are exclusive of freight and passenger earnings received under the agreement with the St. Louis & San Francisco road.

9. The roadway or track of defendant from Eureka Springs is down a creek or small stream to White River and from thence up another such creek or stream to Seligman, near which there is one heavy grade about a mile long. With this exception, the fall or descent from either terminus of the road to White River is light and gradual. There is no tunnel on the road; the cuts are comparatively light side hill cuts, except through one ledge of rocks where some blasting was required. Besides one substantial iron bridge over White River, there are on the road or line of defendant forty-nine wooden trestles, most of them short, slight, low structures. There is nothing in the character of the road or the country through which it is built to make its construction or maintenance exceptionally expensive. Sleeping cars run through to Eureka Springs from St. Louis and other points on the St. Louis & San Francisco Railroad, and the equipment and service on defendant's road is fairly good.

10. Preparatory to building the road, the company issued \$500,000 6 per cent first-mortgage bonds and \$500,000 6 per cent second-mortgage income bonds, the interest payable if earned, not cumulative if not earned; also \$500,000 of stock.

The railroad company organized a construction company. In effect, practically and substantially the railway company and the construction company were the same. The construction company took the \$500,000 first-mortgage bonds, which sold at about 90 cents to the dollar, and with the proceeds built and equipped the road at a cost of from \$23,000 to \$25,000 per mile. The second-mortgage income bonds and the stock "were given" or "went with the others" to the construction company.

There is no substantial disagreement between the parties as to the facts in this case. Whether the through rate of \$1.85 for the 18½ miles between Seligman, Missouri, and Eureka Springs, Arkansas, is reasonable and lawful, and, if not, what should be the maximum legal rate for this transportation service, are the only matters in dispute.

The railway company admits that it cannot lawfully, under the statute of the State of Arkansas, charge more than 5 cents per mile between stations on its line in that State. On the basis of 5 cents per mile, the charge over the 10½ miles of defendant's line in Arkansas would be 52½ cents.

Under the law of the State of Missouri no charge can be made for carrying passengers in that State in excess of 4 cents per mile. On the basis of 4 cents per mile, the charge over the 8 miles of defendant's line in the State of Missouri would be 32 cents, and the aggregate of the charges lawful in Missouri and Arkansas by these standards would be 82½ cents.

Ordinarily the whole charge should not be more than all its parts, and under favorable financial and business conditions we would not hesitate to declare any passenger rate between Eureka Springs and Seligman in excess of 82½ cents unreasonable.

The defendant insists that independent of the Arkansas statute, its rate of charges, 5 cents per mile over that part of its road between Eureka Springs and The Narrows, both stations being in Arkansas, furnishes no criterion for the through charge between Eureka Springs and Seligman, because The Narrows is a place much frequented by Eureka Springs visitors for the purposes of fishing, picnicking and ball playing. Conceding that these are healthy recreations it can hardly be claimed that they are of such exceptional merit that those who indulge in these innocent sports should be accorded more moderate transportation charges than are offered to those engaged in more weighty affairs.

The defendant in support of the reasonableness of its charges urges insufficient income from its passenger service and insists that any reduction of its rate for carrying passengers will result in insolvency. In the apportionment of earnings and expenses between passenger and freight traffic, the defendant credits a much larger part of its earnings to freight than to passenger traffic, while it charges to the passenger traffic much the larger

part of the expenses. Any apportionment of the net earnings derived from these two sources is largely an estimate. On the basis of the actual cost of its road the income of the company is more than sufficient for a fair return on the investment, though on the basis of the face value of bonds and stock issued the earnings are not equal to such return. There is an apparent falling off or decline in the annual earnings of the company, and under present conditions we do not believe a lower rate than \$1.20 (6½ cents per mile) for carrying passengers between Eureka Springs and Seligman is justifiable.

We find the existing rate unreasonable and unlawful; and we further find that any rate in excess of \$1.20 for the transportation of passengers between Eureka Springs and Seligman is and would be unreasonable, unlawful and unjust. An order will be issued accordingly.

KNAPP, Commissioner, dissenting:

I am unable to concur in the conclusions of my associates in this case. In deference to their judgment I should acquiesce in a substantial reduction of the rates in question, even if not fully satisfied that those now maintained are unlawful; but upon the undisputed facts brought to our attention I cannot assent to an order which reduces the one way fare over this road more than a third, and which if enforced would apparently reduce its entire passenger receipts about thirty per cent.

When the proofs were taken in this proceeding in April, 1895, the complainants gave no evidence tending to show directly that the rates in controversy were unreasonable. The testimony of the witnesses called by them was unimportant and established no facts which had not been fully admitted by the answer. They produced the annual report made to them by the defendant company for the fiscal year ending June 30, 1894, which is practically identical with the report made to this Commission for the same period, and on those proofs rested their case. The only witness for the company was its president, whose testimony covered the allegations of the answer and added some statements relating to the construction and business of the road, the expenses incurred in its operation and the earnings derived therefrom. The complainants apparently relied upon a presumption that a rate of ten cents a mile must be unreasonable, while the defendant sought to

justify that charge as a measure of necessity in order to secure sufficient revenue for fixed charges and operating expenses.

As I understand the facts no interest has ever been paid on the income bonds issued by the company, and no dividend has been declared on its capital stock. The interest upon its first mortgage bonds appears to have been regularly met at maturity, and a moderate surplus has been accumulated from the excess of earnings over such interest and the cost of operation.

The gross revenue of the company for the fiscal year 1894, after deducting \$2,058.12 profit on ties, was \$68,090.85, which included a "rebate" of \$12,828.09 received from the St. Louis & San Francisco road under the contract with that company. In its report to this Commission for that year, the "total passenger earnings" are shown to be \$31,843.61. This sum included \$1,453.56 for carrying the mails, \$1,546.96 for express, \$292.60 for extra baggage and storage, and "other items" \$6,301.99. This "other items" was evidently that portion of above stated rebate which was received from passenger business. The direct passenger revenue for that year, therefore, was \$22,248.50, while the total number of passengers carried earning revenue—according to the same report—was only 17,866. As the average receipts that year per passenger per mile were nearly eight cents, including the 3,898 passengers carried at five cents between Eureka Springs and The Narrows, it is quite evident that a maximum rate of \$1.20 between Eureka Springs and Seligman would have reduced the passenger earnings—and consequently the entire earnings—by an amount equal to a large share of the surplus of that year; while that surplus, under the rate actually charged, was little more than the passenger rebate paid by the St. Louis & San Francisco road.

Since this case was heard the Commission has received the annual reports of this company for the fiscal years 1895 and 1896. The report for 1895 shows a slight increase in gross earnings, and a somewhat greater increase in operating expenses; the surplus for that year being \$5,664.18, and the "other items" of passenger revenue—which I take to be mainly, if not wholly, the passenger rebate from the 'Frisco road—being \$6,836.32. The increased earnings for that year were about equally divided between freight and passenger business. The report for 1896 shows gross earnings of only \$62,743.32, the rebate falling to \$4,007.15, and the

surplus to \$1,994.53. Compared with 1895, the freight revenue shows a falling off in 1896 of \$2,009.11, and the passenger revenue a falling off in the latter year of \$4,767.10. The total number of passengers earning revenue in 1895 was 20,131, and in 1896, 18,607. It does not appear how many passengers were carried in either year between Eureka Springs and The Narrows at the rate of five cents, but it does appear that the average per mile on all passengers was nearly seven and one-half cents in 1895, and a little over seven and a quarter cents in 1896. It is plain, therefore, that a maximum rate of \$1.20 applied to the passenger traffic between Eureka Springs and Seligman in 1896 would have resulted in a very considerable deficiency for that year.

It is true, of course, that these reports for 1895 and 1896 were made subsequent to the hearing and are not — strictly speaking — in evidence in this case. It is equally true, however, that the decision in this proceeding is not the settlement of private disputes arising out of past transactions, but the fixing of a standard of compensation for a public service to be performed in the future. For this reason I think the facts contained in these later reports — made under oath in accordance with our instructions and in compliance with the law — should be considered by the Commission. If these reports showed a large increase in the business and profits of the company, or contained other statements at variance with its contention, such a disclosure, I apprehend, would furnish a powerful and almost controlling reason for requiring a reduction in the rates complained of. But the financial history of this road for the last two years, as shown by these reports, tends strongly to sustain the position of the defendant and makes it reasonably certain that, on the basis of present business, a maximum rate of \$1.20 between Eureka Springs and Seligman will not enable the company to maintain its solvency. The conditions now existing and the probabilities indicated by the whole situation have, in my judgment, a most important bearing upon the question at issue; and I cannot find in the facts and circumstances of this case any satisfactory grounds for a decision which will apparently prevent this railway from meeting the interest on its first mortgage bonds. The surplus for 1896 was less than half the passenger rebate paid by the connecting line on the joint business of that year; and this rebate, upon the facts shown respecting it, must be regarded as a doubtful and precarious source of income

in the future. It appears from the evidence, and is otherwise perfectly well known, that the St. Louis & San Francisco company had defaulted its interest prior to the hearing of this case, and that its road was then in the hands of a receiver and about to be sold in proceedings for the foreclosure of the first mortgage upon its property. That sale has since taken place, with the effect—as seems fairly inferable from the circumstances—of rendering valueless this rebate contract with the defendant. If any revenue is now derived from rebates or commissions paid by the successor of the St. Louis & San Francisco company, it is presumably under an arrangement not more favorable to the defendant than the former agreement.

The assured and permanent business of this road is of very limited volume. The region through which it passes is rough and barren. It has little productive capacity and only a small and scattered population. Seligman is merely a railroad junction, and the traffic originating there is insignificant. Eureka Springs has acquired some importance as a place of resort, but is otherwise of little account as a commercial center. Independent of the travelers who visit the “springs” for pleasure or recreation, and the more permanent residents who cater to such visitors, there is hardly enough business within reach of this road to pay the cost of train movement. Such traffic as it can secure depends mainly upon the uncertain popularity of a health and pleasure resort, and its services are employed for the most part by those who live at a distance and seek this locality because of its attractiveness to sightseers and invalids.

The road appears to be maintained in fair condition, and there is no suggestion that its management is improvident or unskillful. Aided by the considerable revenue derived from the St. Louis & San Francisco company, its earnings have thus far been sufficient to pay fixed charges and operating expenses. Examination of the reports above referred to shows no extraordinary outlay, and indicates care and economy in the conduct of its business. In the last three years—according to these reports—no new rails have been laid or bought, and no additions made to the movable equipment. The revenue obtained during these years leaves little margin for re-laying track, rebuilding structures or purchasing new cars and locomotives. The road has succeeded in maintaining its

solvency, but has evidently been much less profitable than was expected at the time of its construction.

The rates complained of are in no sense discriminatory. They do not occasion injury by relative injustice between rival towns or competing articles of traffic. If they did, a very different question would be presented. The necessity for a given amount of earnings is no justification for wrong-doing of that character. It is simply charged that the passenger rates of this company are excessive, and this charge finds little support in the evidence beyond the bare fact that interstate travelers are required to pay ten cents a mile. There is no proof that the road was extravagantly built, or that any dishonesty was connected with its construction. According to the findings, the proceeds of its first mortgage bonds—sold at no unusual discount under the circumstances—were required for building the line and furnishing it with proper equipment. These bonds are now outstanding and secured by a first mortgage upon the company's property. The interest on these bonds must be paid or bankruptcy will follow with all the ordinary incidents of a receivership, foreclosure and reorganization. In view of all the facts and circumstances of the case I am of the opinion that this road should be permitted to continue as a solvent concern, if it is able to do so, and that the public interest does not require the large reduction of rates which has been agreed upon by my associates.

The statutes of Missouri and Arkansas do not appear to me to have much bearing upon the question. Their operation is confined to the states which enacted them, and I doubt if the statute of Arkansas, which limits fares to five cents a mile "on lines over 15 miles in length," has any application to this road, because it has less than 15 miles of line in that state. If this interpretation is correct, as I believe it is, the defendant may lawfully charge 8 cents a mile for local travel within the State of Arkansas. Undoubtedly these statutes impose in the main a just and suitable limitation upon public carriers, but for all that they may be unjust and oppressive in particular instances. There are a number of roads in different parts of the country, even in populous States like New York, which are authorized by law to charge ten cents a mile, and I am not prepared to concede that such a rate must be presumed to be unreasonable.

For the reasons thus briefly suggested I am constrained to dissent from the decision rendered in this case.

CHARLES M. WILLSON
v.
ROCK CREEK RAILWAY COMPANY OF THE DIS-
TRICT OF COLUMBIA.

Decided March 12, 1897.

1. The defendant, operating a line of electric railway lying partly in the District of Columbia and partly in the State of Maryland, is subject to the provisions of the Act to Regulate Commerce, although it appears to be constructed upon or along public highways, and is essentially a street surface road for the conveyance of urban and suburban passengers. *Yeomans and Prouty*, Commissioners, dissenting.
2. All internal commerce is either state or interstate. Commerce carried on between the State of Maryland and the District of Columbia is not subject to regulation by Maryland laws, and is therefore within the jurisdiction of Congress.
3. The defendant railway company and a land company owning land and a suburban hotel along the line of railway are distinct corporations, but under substantially the same ownership and control. The land company purchased passenger tickets of the railway company at full rates of fare, and sold them at half rates to guests of its hotel, to persons residing upon land which it had sold or otherwise transferred, and to others, but refused to sell such tickets at half rates to complainant, who, though living in the same locality, resided upon ground not acquired from the land company. *Held*, Upon the evidence presented, that no discrimination was practised by the railway company; that the community of interest between the two corporations resulting from common ownership was not made a device for enabling the railway company to evade its legal obligations; and that the action of the land company in discriminating between persons in the sale of tickets for the benefit of its separate business is not subject to correction by this Commission. *Morrison and Clements*, Commissioners, dissenting.
4. Defendant charged one fare of 5 cents for the ride in Maryland and another for the ride in the District of Columbia, selling, however, six tickets for 25 cents, good for passage in either the District or State, making a through fare of 10 cents, or two such tickets for a continuous ride between Maryland and the District, the total length of its road being about 7½ miles. *Held*, That unreasonableness cannot be presumed from the amount of fare so charged and the other facts incidentally appearing, no direct evidence upon that question having been presented.
5. Complaint to be dismissed without prejudice, unless complainant shall file application for rehearing.

John R. Lynch for complainant.

Henry E. Davis for defendant.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, Commissioner:

The charge of unlawful discrimination investigated in this case is based upon facts which are practically undisputed. The carrier complained of denies that these facts disclose the violation of any legal duty, and also, upon grounds hereinafter set forth, denies that it is subject to the jurisdiction of this Commission. The questions to be determined appear from the following statement:

FACTS.

1. The complainant resides at Chevy Chase, in the State of Maryland, and has occasion to use the railroad operated by defendant in passing to and from his place of business in Washington, in the District of Columbia.

2. The defendant company owns and operates a railroad between the city of Washington, D. C., and Chevy Chase Lake in Montgomery county, Maryland. The total length of its road is approximately $7\frac{1}{2}$ miles, of which about $5\frac{1}{2}$ miles are in the District of Columbia and the balance in the State of Maryland. The road is operated by electricity, and belongs to the class commonly known as "trolley" roads.

3. This railroad is used mainly for the conveyance of passengers. Cars containing merchandise are, however, frequently hauled; but this is claimed to be done for the convenience of its traveling patrons, and the company does not hold itself out to the general public as a carrier of freight.

4. The Rock Creek Railway Company of the District of Columbia was incorporated by act of Congress passed on or about June 12, 1888. Under this original charter and one or more supplementary acts, it constructed that portion of its existing line which lies within said District. For a single ride between any two points on the line thus authorized to be built, its charges are limited by a provision in its charter to 5 cents; and it is also required to sell tickets in packages of six for not more than 25 cents per package.

5. The Chevy Chase Land Company of Montgomery county, Maryland, is a corporation organized on or about June 5th, 1890, under the general laws of the State of Maryland. It appears to be the owner of a considerable tract of land in said Montgomery county, adjoining the northerly line of the District of Columbia, which it is holding and improving with the view to sale for residence purposes. Among the objects stated in its certificate of incorporation was "the construction, equipment and operation of a passenger railway within said Montgomery county, State of Maryland;" and it did, as appears, construct, equip and put in operation an electric "trolley" road from the northern terminus of the Rock Creek Railway Company's original line, on the boundary between the District of Columbia and the State of Maryland, through its aforesaid tract of land, to Chevy Chase Lake, a distance of about 2 miles. It does not appear that charges for traveling on this road are limited by law, but the company established a uniform fare of 5 cents for a single ride, and also sold tickets to all persons in packages of six for 25 cents per package. This company also erected on its lands and near the line of its railway an hotel, known as Chevy Chase Inn, where guests in considerable numbers are received and entertained.

6. Under the authority conferred by an act of Congress approved March 3, 1891, and an act of the General Assembly of Maryland approved February 26, 1892, the Rock Creek Railway Company purchased from the Chevy Chase Land Company its said line of railroad in Montgomery county, and since such purchase has owned and operated the same, in connection with the road of the former company in the District of Columbia, as a single and continuous line. That portion of the line within said District is called the "D. C. Division," and the portion purchased as aforesaid is called the "Maryland Division."

7. For a time after such purchase was effected the defendant company carried passengers over both divisions and between all points on the entire line for 5 cents each, and sold tickets for such passage at the rate of six for 25 cents. It is claimed that this compensation was inadequate and resulted in a loss to the company, and thereupon the fare was increased to 10 cents for a single ride—or $8\frac{1}{2}$ cents when tickets are purchased—over the entire line or between points on one division to points on the other division, and such higher rates have since been enforced

8. The defendant company issues double or coupon tickets good for passage over its entire line, one coupon for the fare over its D. C. division, the other coupon for the fare over its Maryland division. These tickets are sold in packages of six at the rate of $8\frac{1}{3}$ cents apiece, and are offered freely to all persons who choose to purchase the same. The single tickets of either division—sold for 25 cents in packages of six—are also received for fare over the other division.

9. The Chevy Chase Land Company is a large and frequent purchaser of such double or coupon tickets, and pays for the same the full price of $8\frac{1}{3}$ cents each at which they are sold, or offered for sale, to other customers and the public generally. Upon the sworn allegations in the defendant's answer and the statement of its counsel at the hearing, no evidence to the contrary having been produced, it is found that the defendant company receives the sum of $8\frac{1}{3}$ cents for each such ticket sold to the Chevy Chase Land Company, and that it makes no discrimination in the sale or use of such tickets as between said Chevy Chase Land Company and other patrons of its road.

10. The Chevy Chase Land Company, however, to encourage the purchase and occupation of its lands, and to induce the public to patronize its hotel, or for other reasons satisfactory to itself, sells these double tickets to such persons as it chooses to favor at one half the price paid therefor. The class of persons invited to buy tickets at half rates is indicated by a notice posted in the cars of the railway company, to the effect that residents of Chevy Chase and guests of Chevy Chase Inn can procure, at the office of the Chevy Chase Land Company, commutation tickets entitling them to transportation over the Rock Creek Railway to and from Chevy Chase for one fare each way. The "commutation" tickets thus advertised and sold are the aforesaid double tickets of the railway company, for which that company is paid the full price charged to the public generally as above stated. As a result of this arrangement, which obviously involves a direct loss to the land company, those who reside on lands bought from that company and those who seek entertainment at its hotel, as well as any others to whom it may accord the privilege, are able to secure a continuous ride over both divisions of this railway, or from points on one division to points on the other division, for a single

fare; while other persons, to whom the sale of such commutation tickets at half rates is refused, must pay two fares for a ride over both divisions or from points on one division to points on the other division. The tickets so purchased by the land company were not sold by it at half price for the purpose of enabling the railway company to discriminate between its patrons, or to otherwise evade its legal obligations; but such purchases and sales were made by the land company in good faith with the view of aiding the disposition of its property and increasing the patronage of its hotel.

The complainant does not reside on lands purchased from the Chevy Chase Land Company, and is not allowed to buy these so-called commutation tickets at half price, though he has made due application therefor. The sale of such tickets by that company to certain persons at half price, and its refusal to sell them to other persons at less than full rates, constitute the discrimination complained of in this proceeding.

11. In the absence of any evidence to the contrary, the passenger rates established and maintained by the defendant company for conveyance over its entire line, or from points on one division to points on the other division, to wit, 10 cents for a single ride, or $8\frac{1}{2}$ cents when tickets are procured, are not found to be unreasonable.

12. The Rock Creek Railway Company and the Chevy Chase Land Company are different corporations, each having in law a distinct and separate existence. Both of them, however, are under the same control. They have different presidents, but the same secretary and the same treasurer. There are stockholders in each who are not stockholders in the other, but the record shows that two persons hold substantially all the stock of both companies, and one of these persons, described as "trustee," holds more than two-thirds of the stock of each corporation. The ownership of one is practically identical with the ownership of the other.

13. The railroad thus owned and operated appears to be constructed upon or along public highways, and is essentially a street surface road for the conveyance of urban and suburban passengers. No printed schedule of fares and charges is posted in the manner required by the Act to Regulate Commerce, and the

defendant company, claiming to be exempt from the operation of that law, neither files tariffs with nor makes reports to this Commission.

CONCLUSIONS.

The conclusions arrived at from a consideration of the foregoing facts may be briefly stated.

We cannot sustain defendant's contention that the Act to Regulate Commerce applies only to the ordinary steam railways by which interstate traffic is mainly carried, and that street surface roads for urban and suburban passenger travel are exempt from its provisions. It may be conceded that this class of railroads was not specifically within the contemplation of the framers of that law, for the evils which it was intended to remedy would, in the nature of the case, but rarely arise in the management of such roads and their dealings with the public. But the terms of the statute in this regard are broad and general, and it contains no exception indicating a design to exclude from its operation those interstate roads which are constructed upon public highways, to provide the means for local passenger transportation in the streets of towns and cities and their various suburbs. We see no reason to doubt that the authority of this enactment may be invoked for the regulation of carriers like the defendant, if their business is actually interstate, whenever occasion arises for subjecting them to its restraints and requirements.

Nor can we admit that the law is inoperative in this case because the constitutional power of Congress to "regulate" commerce is confined to commerce "among the several States," and the District of Columbia is not a *State* within the meaning of that phrase. If such a proposition is correct as to commerce between the District of Columbia and an adjoining State, it is equally conclusive as to commerce between a State and an adjacent Territory, or between any two Territories; and it would necessarily follow that there is a large amount of internal commerce, and a vast variety of agencies employed in its transportation, which are not only uncontrolled by existing laws, either national or State, but which are beyond the reach of any legislative authority.

Without entering upon further argument we are constrained to reject this view and to hold, so far as this question is concerned,

that all internal commerce is either State or interstate; and as the "commerce" in which the defendant is engaged is not carried on within the limits of Maryland, but between that State and the District of Columbia, and is therefore not subject to regulation by Maryland laws, it must be within the jurisdiction of Congress and amenable to the statute which it has enacted.

But we are of the opinion that the facts disclosed by this investigation cannot justify the inference of unlawful conduct on the part of this defendant, and that the matters complained of do not constitute a violation of any provision of the statute. No discrimination is practised by the Rock Creek Railway Company, and its facilities are available to all persons upon the same terms. If it sold its passage tickets to the Chevy Chase Land Company for a less sum than it requires others to pay, or if its treatment of that company was different in any material respect from its treatment of other customers and the public generally, it would, in view of the identity of ownership of the two properties be guilty of a plain and most obnoxious transgression of the law. But the fact appears to be otherwise and is so found. If the Chevy Chase Land Company, in the course and for the benefit of its separate business, sees fit to sell at half price, or to give away altogether, tickets for which it has paid the defendant full price, we are unable to perceive wherein any legal right is exceeded or any legal duty disregarded.

The circumstance that both companies are under a common ownership does not affect the relations of the railway company to the public, for it is not to be presumed, and we cannot hold from the evidence before us, that this community of interest is a device for enabling the railroad to evade its legal obligations. So far as its charges are reasonable and maintained without preference or favoritism to any of its patrons, as now appears to be the case, it is to that extent conforming to the law and meeting its requirements. It seems to be the misfortune of complainant, and those in like situation, that the land company declines to pay any part of their expenses for traveling over this railway, but if that be an injustice it is one for which the Act to Regulate Commerce affords no remedy.

This conclusion is based on the assumption that the railway company, as a matter of fact, receives its full regular rates for all

tickets sold to or disposed of by the land company, and that the lower rates at which certain persons are actually carried over this road result solely from the arbitrary action of the latter company in selling tickets to such persons at one half the price paid therefor. If the complainant is able to show that the fact is otherwise, an early opportunity will be afforded him to do so. As the proofs on this point now stand, we hold that the discrimination concededly practiced by the land company in the sale of these tickets is not subject to correction by an order of this Commission.

Nor is the decision now made a final determination that defendant's rates are reasonable for passage over its entire line, or from points on one division to points on the other division; and that question may be further litigated if the complainant so desires. In the absence of any direct evidence upon that issue, we cannot presume unreasonableness in this case from the amount charged and such other facts as have been made to appear. We are convinced that an inference against these rates would not be justified by anything yet brought to our attention. If, however, the complainant wishes to offer testimony in support of his contention in this regard, a rehearing will be granted on his application; otherwise the complaint will be dismissed without prejudice.

PROUTY, Commissioner:

I concur in the disposition of this case upon the ground that no unjust discrimination is shown. I am of the opinion, however, that the Commission has no jurisdiction of the defendant's railway, for the reason that the Act to Regulate Commerce does not include a street railroad. No importance is attached to the kind of motive power. The term "railroad" is undoubtedly broad enough to include a street railway, and often does include it in statutory enactments. There is, however, a wide distinction between a railroad in the ordinary acceptance of that term and a street railroad, and whether the term "railroad," when used in a particular statute, does or does not include a street railway, is a question of legislative intent in each particular case. Looking to the scope and substance of the Act to Regulate Commerce, I do not think that Congress intended to include street railways.

YEOMANS, *Commissioner*, instructs me to say that he concurs in these views.

MORRISON and CLEMENTS, *Commissioners*, dissenting:

We are of opinion that commerce carried on between the District of Columbia and the State of Maryland by railroad includes that carried on by a street railroad, and that the defendant's road is subject to the provisions of the Act to Regulate Commerce.

The discrimination complained of and alleged to be unjust is effected through the Chevy Chase Land Company. This company sold to the guests of its hotel, to persons residing on land it had sold or transferred, and to other persons, the tickets of the Rock Creek Railway Company at half rates, and refused to sell such tickets at half rates to complainant, who resided in the same locality, but not on land acquired from this land company. This is sought to be justified upon the alleged ground that this discrimination is not the act of the street railway company, which, it is claimed, sells its tickets to the land company at the full price charged to all other persons.

If it were conceded that this discrimination was practiced directly by the railway company, the illegality of the transaction could hardly be questioned. It is admitted that practically all the stock of both the land company and the railway company is owned by the same persons, and that the control and management of the two companies are substantially identical. This discrimination is the joint act of the two companies, the land company being the instrumentality through which the discrimination is effected. The railway company as a common carrier should not be permitted to accomplish thus indirectly what if done directly would be a transparent and manifest violation of the Act to Regulate Commerce.

MILK PRODUCERS' PROTECTIVE ASSOCIATION,
Complainant,

v.

THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; NEW YORK, ONTARIO & WESTERN RAILWAY COMPANY; NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY, and J. G. McCullough and E. B. Thomas, the Receivers thereof; NEW YORK, SUSQUEHANNA & WESTERN RAILROAD COMPANY; PENNSYLVANIA, POUGHKEEPSIE & BOSTON RAILROAD COMPANY, and Henry H. Kingston, the Receiver thereof; LEHIGH VALLEY RAILROAD COMPANY; NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY; LEHIGH & HUDSON RIVER RAILWAY COMPANY; The President, Managers and Company of THE DELAWARE & HUDSON CANAL COMPANY; ALBANY & SUSQUEHANNA RAILROAD COMPANY; PHILADELPHIA, READING & NEW ENGLAND RAILROAD COMPANY, and J. K. O. Sherwood, Receiver thereof; NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; WEST SHORE RAILROAD COMPANY; WALLKILL VALLEY RAILROAD COMPANY; ULSTER & DELAWARE RAILROAD COMPANY; ELMIRA, CORTLAND & NORTHERN RAILROAD COMPANY; LEHIGH & NEW ENGLAND RAILROAD COMPANY, and THE ERIE RAILROAD COMPANY, *Defendants.*

Decided March 13, 1897.

1. The complaining Milk Producers' Association, whether representing its own members, or specially authorized to represent other shippers, or assuming in addition to represent shippers engaged in the same industry on some of the defendant lines, was entitled to bring and maintain this proceeding, affecting rates on milk supplied for a common market, against all the defendants engaged in carrying for that market. A defendant carrier is not entitled to have a complaint dismissed as to it "because of the absence of direct damage to the complainant," and it is the duty of the Commission, under express direction in the Act, to "execute and enforce" the provisions of the statute.

2. The defendant, the New York, Susquehanna & Western Railroad Company, engaged in the transportation of milk and cream from points in the State of New York through the State of New Jersey to the City of New York, is subject to regulation under the Act to Regulate Commerce in respect of such transportation.
3. Charging the same aggregate rates on like traffic for longer and shorter distances over the same line, in the same direction, does not contravene the provisions of section 4 of the Act to Regulate Commerce.
4. The free transportation of shippers or dealers between State or interstate points on account of interstate freight traffic furnished to the carrier is unlawful.
5. Whether an agreement entered into by a carrier mainly for the purpose of developing its milk traffic, and under which compensation is afforded to the other contracting party equal to a considerable share of the gross receipts from such traffic, involves extravagant expenditure of revenue and is disadvantageous to the carrier, is matter for it to determine; but extraordinary or unnecessary cost of operation or management cannot be permitted to excuse unreasonable or unjust rates, discriminations, preferences, or prejudices.
6. Charging the same rate per quart on milk in 40-quart cans and in bottles, usually of one quart capacity, and packed in cases, found to constitute discrimination in favor of the bottle method of shipment, but for reasons stated,—*Held*, that the proper relation of rates as between can and bottle milk from all points of shipment need not now be determined.
7. A uniform or blanket rate on milk and also on cream from all stations on the defendant lines to Weehawken, Hoboken, and Jersey City, N. J., or through Jersey City to New York, N. Y., namely, 32 cents on milk and 50 cents on cream per can of 40 quarts, regardless of distance or difference in amount of service rendered,—*Held*, to be unreasonable, unjust, and unduly prejudicial and disadvantageous to producers and shippers nearer the points of delivery, and in violation of sections 1 and 3 of the Act to Regulate Commerce.
8. Upon all the facts and circumstances, including the peculiarities of defendants' milk and cream transportation service, *Held* :—

That instead of the present method of charging uniform rates per 40-quart can of 32 cents on milk and 50 cents on cream from all interstate shipping stations on the defendant lines west of the Hudson River to the respective points of delivery in Weehawken, Hoboken and Jersey City, N. J., there should be at least four divisions or groups of stations, the first group extending 40 miles from the terminal in New Jersey; the second, covering a distance of 60 miles and ending about 100 miles from such terminal; the third, embracing stations within the next 90 miles and extending about 190 miles from the terminal; and the fourth, comprising stations beyond 190 miles from the point of delivery.

That the rates charged on milk in 40-quart cans should not exceed 23 cents from the first or 40-mile group of stations, 26 cents from the second

or 60-mile group, nor 29 cents from the third or 90-mile group, and that the present rate of 32 cents from stations more distant than 190 miles is not unreasonable; that a rate on cream in cans which is 18 cents higher than the rate on milk in 40-quart cans, the present difference, is not unreasonable or unjust; that such group distances and rates should apply on the branches as well as on the main lines, and that the resulting relations of rates should be maintained; that any reduction that may be made in the present rate per quart on milk or cream in bottles should be followed by a corresponding change in the rate for each group on milk or cream in 40-quart cans.

That the distance on the Ulster & Delaware road covered by the third group should be limited to 30 miles, and stations on that road more than 190 miles from Weehawken *via* the West Shore road should constitute its fourth group; that by short-line distances all points on the Wallkill Valley and Lehigh & Hudson River roads are within the second group, and rates from such stations should not exceed those applicable for the second group; that the Erie Railroad Company should charge third group rates from points on its Carbondale branch which can be reached over distances less than 190 miles *via* the Scranton branch of the Ontario & Western, and such relief from the operation of the 4th section is granted to the Erie Company as may be necessary to enable it to lawfully make such charges effective; that the defendant, the New York, Susquehanna & Western Railroad Company, is entitled on shipments of milk and cream from New York points which it carries through New Jersey and delivers in New York City to charge such an addition to its rate to Jersey City, N. J., as is reasonably warranted by the greater cost of delivery in New York City.

Evarts, Choate & Beaman, for complainant.

John J. Beattie, for Lehigh & Hudson R. Ry. Co.

Rogers, Locke & Milburn, for D. L. & W. R. R. Co.

John B. Kerr, for N. Y. O. & W. Ry. Co.

F. I. Goicen and *F. H. Janvier*, for L. V. R. R. Co.

Ashbel Green, for N. Y. C. & H. R. R. R. Co.; W. S. R. R. Co. and the Wallkill V. R. R. Co.

Henry W. Tufel, for N. Y. N. H. & H. R. R. Co.

Setson, Tracy, Jennings & Russell, for N. Y. L. E. & W. R. R. Co. and Receivers, and Erie R. R. Co.

Amos Van Etten, for Ulster & Delaware R. R. Co.

Leopold Wallack and *Alfred A. Cook*, for N. Y. S. & W. R. R. Co.

David Willcox and *Lewis E. Carr*, for the D. & H. C. Co., and Alb. & Sus. R. R. Co.

F. R. Gilbert and *George W. Ray*, for Producers of Milk at Longer-Distance Points.

REPORT AND OPINION OF THE COMMISSION.

By THE COMMISSION:

The complaint in this case is directed against defendants' practice of charging for the transportation of either milk, buttermilk or cream to their terminals at Weehawken, Jersey City or Hoboken, N. J., or New York, N. Y., a group or blanket rate from all shipping stations on their respective lines, regardless of distance. Upon this basis of complaint the petitioner alleges as follows:

1. That the petitioner is a voluntary association of farmers and milk producers and other persons interested in milk production, having its principal office and place of business at Chester, N. Y.; that it makes this complaint, not only on behalf and in the interest of itself and its members, but also on behalf of all other farmers, producers and shippers of cream, milk and buttermilk from all shipping points for such traffic on defendants' roads to the cities of Hoboken, Weehawken, Jersey City and New York; and that its members and those whom it represents ship and transport over the defendant lines every day of each year large quantities of milk, cream and buttermilk, aggregating many carloads daily, from various shipping points on such lines in the States of New York, Pennsylvania, Massachusetts and Connecticut to said places of destination.

2. That the defendants, engaged as common carriers by railroad in the transportation of property by continuous carriage or shipment between points in New York, Pennsylvania, Massachusetts and Connecticut, and points in New Jersey and New York, are subject to the provisions of the Act to Regulate Commerce and Acts amendatory thereof or supplementary thereto.

3. That the rates charged by the defendants are 50 cents per can for cream and 32 cents per can for milk and buttermilk, from all shipping points in the States of New York and Pennsylvania to Jersey City, Hoboken, and Weehawken, in the State of New Jersey, and 45 cents and 50 cents per can for cream, and 25 cents and 32 cents per can for milk and buttermilk, as the case may be, depending upon the route, from all shipping points in the States of Massachusetts and Connecticut to the city of New York, in the State of New York, and to Weehawken, in the State of New Jersey, including the return carriage of said cans when empty to

said shipping points; that said cans when filled weigh 100 pounds, or thereabouts, and when empty about 20 pounds; that the same rates are maintained and charged on said commodities for all distances, however short or long, from said Jersey City, Hoboken, and Weehawken, and said city of New York, respectively, such distances in some cases exceeding 300 miles; that the rates charged by said defendants are a very large percentage of the entire value of the cream, milk, and buttermilk carried, are purely arbitrary, are not at all graduated upon the distance of the terminal from the shipping points, nor based to any extent upon the value of the product carried, or upon the cost of carriage to the defendants, or upon any special service rendered; that other similar classes of freight and farm produce of equal value, such, for example, as butter and cheese, composed of the same elements as milk and cream, together with fresh fruits and vegetables of a perishable nature, designed for the supply of a like special market, and requiring a like special train service, are transported by said defendants upon the same trains carrying said milk and cream, as well as upon other trains, from the shipping points aforesaid to said Jersey City, Hoboken and Weehawken, and said city of New York, for a very much less rate, although the character of the transportation, risk and service are in all respects the same as to such other articles; that for these and many other reasons said rates and charges on cream, milk, and buttermilk, made and exacted by said defendants, are not reasonable and just within the meaning of said Act to Regulate Commerce, but are now, and for a great many years have been, unjust and unreasonable, both in themselves and relatively, as compared with the rates charged by the defendants for, and with the defendants' classification of, other similar merchandise and like kinds of traffic between the same points; and that all of said rates are in violation of the provisions of said Act to Regulate Commerce as amended.

4. That for the same reasons such rates and charges constitute unjust discriminations in the rates which are demanded, collected and received by said defendants respectively from the milk producers represented by complainant, in view of the fact that said defendants respectively demand, collect and receive from other persons, for a like and contemporaneous service in the transportation of like kinds of traffic as aforesaid, under not only sub-

stantially similar but identical circumstances and conditions, a much less rate of compensation, and that the rates and charges of said defendants as aforesaid are, therefore, in violation of said Act to Regulate Commerce as amended.

That the defendant, the Lehigh Valley Railroad Company, especially, has thus violated said Act to Regulate Commerce, and has, by special agreement or otherwise, made a special rate for, and furnished special facilities to, the association known as the Farmers' Dairy Despatch, by which said Despatch is enabled to control the transportation of substantially all of the cream, milk and buttermilk transported over that railroad, for the special and sole advantage and benefit of said defendant and said Farmers' Dairy Despatch. That the defendant, the Delaware, Lackawanna & Western Railroad Company, has also, in like manner, especially violated said Act to Regulate Commerce by its special contract or arrangement with an association known as the Produce Despatch.

5. That the rates charged by the defendants for so transporting over their various lines or routes the cream, milk and buttermilk of said producers and shippers, are no less for shorter than for longer distances, are not graduated on account of distance or mileage, and constitute an undue and unreasonable preference and advantage extended by said defendants to particular persons and localities, and subject said milk producers in the States of New York and Connecticut, who are nearer the terminals at Jersey City, Hoboken and Weehawken and at the City of New York, as to their particular description of traffic, to undue, unjust and unreasonable prejudice and disadvantage, in favor of other persons in other localities, farther removed from the said terminals, and in favor of other persons whose traffic is a like kind of traffic, carried under identical circumstances and conditions, and that the rates and charges of said defendants as aforesaid are, in this respect, also in violation of the terms of said Act to Regulate Commerce, as amended.

6. That said rates do, in almost every instance constitute a further violation of said Act to Regulate Commerce, as amended, in that such rates and charges result in greater compensation for the transportation of like kinds of property, under substantially similar circumstances and conditions, for a shorter than for a

longer distance over the same line or lines of connected roads in the same direction, the shorter distance being included within the longer distance.

7. That petitioner refers to and makes a part of its petition the classifications and various schedules, rates and charges adopted and used by the defendants and on file in the office of this Commission for the transportation of cream, milk, buttermilk, butter, cheese, fresh fruits, fresh vegetables, dressed meats, horned cattle, wheat, corn, oats, flour, and other similar products.

The petitioner prays for an order commanding the defendants, and each of them, to wholly cease and desist from the aforesaid violations of the provisions of said Act to Regulate Commerce, as amended, and for such other and further orders as the Commission may deem necessary in the premises.

The Lehigh & New England Railroad Company having succeeded to the control of the railroad of the defendant, the Pennsylvania, Poughkeepsie & Boston Railroad Company, was duly made a party defendant to the proceeding by order entered on June 21, 1895.

Answers were filed by all the defendants except the Lehigh & New England Railroad Company and the Philadelphia, Reading & New England Railroad Company and its receiver. All of the defendants answering deny the violations of law alleged in the complaint, and, while admitting that the rates are substantially as set forth in the petition, claim that the rates are justified by the special nature of the traffic and character of the service rendered.

The answer of the New York, Lake Erie & Western Railroad Company and its Receivers admits that they are common carriers as alleged in the complaint; avers on information and belief that petitioner is an association of farmers and milk producers and other persons interested in milk production located, so far as their lines are concerned, within a distance of 90 miles of New York City; admits that the members of the petitioning association, or some of them, ship and transport over their roads considerable quantities of cream, milk and buttermilk from points on said roads within 90 miles of New York; denies that the petitioner represents all shippers of milk, cream and buttermilk over said lines, and avers that petitioner is acting in hostility to and not in

behalf of the greater number of such shippers, and that the main purpose and object of the petition is to create a monopoly of the milk business in favor of a limited class of shippers by securing lower rates to them than are granted to more distant shippers, the practical effect of which will be to drive the latter out of business and thus enable the petitioner and those it represents to secure higher prices from consumers; that ever since the establishment of the business of transporting milk from remote points to New York and Brooklyn (upwards of forty-five years ago), it has been the custom of all the common carriers engaged in that business to charge a uniform fixed rate per quart or gallon for the milk so transported, irrespective altogether of the length of the haul, and that the same custom now prevails; that such custom owes its origin and long continuance to the fact, among others, that milk is sold to all consumers in the cities aforesaid at a uniform price for the quantity sold; and it was, therefore, deemed better and more satisfactory for all parties interested to have one uniform charge for transporting milk, irrespective of distance, instead of pro-rating for the same according to the length of haul; that this practice has given general and almost universal satisfaction, and that there is not now any legal or just ground for complaint against the same; that it is of the greatest importance to the citizens of New York and Brooklyn, as well as to other consumers of milk, to have the area for the production thereof enlarged as much as possible, instead of having the same narrowed and circumscribed, which would be the effect of granting the prayer of the petitioner, as it would result in a monopoly in the milk business by preventing the establishment of dairy farms and creameries at a greater distance than 50 miles from New York City, which, as these defendants believe, is the sole purpose of the petition; that the business of producing milk is a peculiar one, confined to few localities in comparison with the raising of other farm products, and therefore requires all lawful and reasonable encouragement for the establishment and successful working of dairy farms and creameries; that, as these defendants are informed and believe, a large number of persons, relying upon the above-mentioned custom of making the same charge for the transportation of milk, irrespective of the length of the haul, have established dairy farms and creameries along the lines of their roads at

various points beyond any point at which the persons represented by the petitioner are located; and that any change in the rates heretofore charged for the transportation of milk would cause great loss and damage to the parties located at such more distant points.

The foregoing answer illustrates the general line of defense set up in this case.

As to the alleged special rates and facilities granted to the Produce Despatch by the Delaware, Lackawanna & Western, and to the Farmers' Despatch by the Lehigh Valley, each of these defendants, upon information and belief, denies that it has violated the Act to Regulate Commerce by any special contract or arrangement with any such association or Despatch. Each of these defendants also specifically denies that by any such arrangement it has agreed to carry or does carry for such Despatch all milk, cream and buttermilk transported for its market for a less compensation than it charges, collects, demands or receives from any other person or persons for doing for them alike or similar service under substantially the same circumstances and conditions, or that any arrangement has been entered into by it for the purpose of giving to such Despatch the control of the transportation of all such products over its railroad, for the special and sole advantage and benefit of said defendant and of said Despatch or otherwise.

The Lehigh Valley Railroad Company, while admitting that its rates are as charged in the complaint from points in New York and Pennsylvania to Jersey City, N. J., says they are lower to that point from shipping stations in New Jersey, and therefore denies that its rates on milk, cream and buttermilk are not at all graduated or fixed upon the distance of the terminal from the points of shipment.

The amended answer of the New York, New Haven & Hartford Railroad Company, after denying the alleged violations of law, avers that its rates are as set forth in its tariffs 52-D and No. 3391, both effective April 1, 1893. This company further states in its answer that it makes no distinction in its rates for the transportation of milk, cream and buttermilk, the rates named in its tariffs applying to all three of these commodities alike; and that such rates, though not graduated according to distance, are fixed

at the minimum at which the service required for such transportation can be furnished for any distance; that for such service it furnishes at great cost special trains and other facilities of a different character than are required for the transportation of other merchandise.


Some of the defendants aver in their answers that they are not subject to the Act to Regulate Commerce in respect to the transportation involved in this case, and this averment is based upon various grounds: The Elmira, Cortland & Northern Railroad Company, because, operating a road wholly within the State of New York, it delivers milk to the Delaware, Lackawanna & Western road, and for its service charges its local rates to the junction point; the Delaware & Hudson Canal Company (covering the Albany & Susquehanna road), because, while it has joint rates on milk, it does not itself transport the traffic outside of the State of New York. The New York, Susquehanna & Western raises the question of jurisdiction as to most of its milk traffic, and says that while its road runs through the States of New York, Pennsylvania and New Jersey, the greater portion of all the cream, milk and buttermilk received by it in the State of New York for delivery from producers and shippers is daily transported by it and delivered in the City of New York, in said State, on through bills of lading; that all shipments of milk, cream and buttermilk received by it in the State of New Jersey for transportation during the period complained of in said petition were daily received and delivered by it at points in the State of New Jersey, and that it ships no milk, cream or buttermilk from the State of Pennsylvania to the State of New Jersey or to the State of New York.

On stipulation signed by counsel for petitioner and the defendants, the New York, Lake Erie & Western Railroad Company and its Receivers, and the Erie Railroad Company, filed July 11, 1896, the Erie Railroad Company, then and now operating the railroad formerly known as the New York, Lake Erie & Western Railroad, was made a party defendant herein with the same effect as if it had been an original defendant and duly served as such with all necessary notices in the proceedings theretofore had in this case.

Hearings were had in New York City, November 18 to 23, and

December 17 to 19, 1895. The case was argued orally by counsel on January 30, 1896, and briefs were filed during the period between February 10 and April 3, 1896. At the second hearing, on motion of counsel appearing, milk producers at or near stations on the Erie Railroad west of Orange County, N. Y., and the more distant stations on the New York, Ontario & Western and Delaware, Lackawanna & Western roads, were allowed to intervene in opposition to the petition.

In the case of N. W. Howell and other Orange County milk producers against the New York, Lake Erie & Western, the New York, Ontario & Western, the New York, Susquehanna & Western, and the Lehigh & Hudson River roads, decided by the Commission in 1888 [2 I. C. C. Rep. 272, 2 Inters. Com. Rep. 162], a uniform rate on milk as then charged by those companies from points reached by their regular milk trains was, upon the evidence there presented, held to be lawful. In that proceeding the Commission failed to find any resulting injury to the complaining producers, and in connection with a commendation of the uniform milk rate as then applied by these four carriers, it was said: "Until some actual injury to them (Orange County farmers) arises, the Commission does not feel justified in holding that the grouping of the milk rate upon the route carried daily by a separate milk train, operated as a unit, works undue or unreasonable prejudice to the complainants." It appeared in that case that milk was carried considerable distances over the Erie and Ontario & Western from points beyond those reached by their regular daily milk trains, and that no additional charge was made therefor. As to this the Commission said: "A charge for such service somewhat higher than the charge made upon the route of the daily regular milk train proper would seem to be just, and perhaps to be necessary, in order to fairly equalize the proportionate privileges afforded, in view of the material increase of cost required to send cars out to points beyond the terminus of the daily trip, and to bring them back loaded, at an hour convenient for making up the train. Nevertheless it does not appear but that the present rates to those more distant points are already sufficiently high. No increase in those rates can be recommended or would be proper, in view of the facts above stated, upon the point of the reasonableness of the present tariff. It is presumed



that the rates to all points can be adjusted by the carriers themselves in conformity with the views herein intimated and without any further consideration of details by the Commission. In case that the subject of a reduction of the rates in general shall be brought again before the Commission, the question of grouping, to the extent last above indicated, will be regarded as still open."

Since that decision was rendered the Erie and Ontario & Western have greatly extended their milk territory, as will more fully appear in the findings of fact herein, and other lines, parties to this case, but which were not defendants in that proceeding, have engaged very extensively in the transportation of milk from far-distant localities. Moreover, the uniform rate now charged throughout such extended area is less than that complained of in the *Howell Case*. The question of the reasonableness of the rate complained of in the *Howell Case* was retained by the Commission to enable the complainants to produce additional evidence, and in view of all the changes in conditions respecting the shipment and transportation of milk under a uniform rate, together with the failure of the Erie and Ontario & Western to carry out the recommendation of the Commission for an additional charge for service beyond the points reached by their regular milk trains at that time, the entire question of the legality of the uniform or blanket milk rate should be and is regarded as properly reopened in this proceeding.

FACTS.

1. The petitioner, the Milk Producers' Protective Association, is an unincorporated body having a membership of about 627 milk producers and shippers, farmers, merchants, dealers and others; and of this number about 600 are directly or indirectly interested in the production of milk, buttermilk and cream in the counties of Orange, Ulster and Sullivan, New York, and Sussex, New Jersey, and the shipment thereof by rail for sale and consumption in the City of New York and cities adjoining. The section of country north and westerly of New York City, comprising Sussex and other counties in northern New Jersey, Orange County, N. Y., and contiguous portions of Ulster and Sullivan counties in New York, constitute a large part of a near-by producing region from which a considerable portion of the milk and

cream consumed in New York and adjoining cities is supplied. Other portions of this near-by region are Long Island, N. Y., the southeasterly section of New York State east of the Hudson River, and some adjoining parts of western Connecticut and Massachusetts. Milk and cream are also forwarded in large quantities for consumption in New York, Brooklyn and Jersey City, from relatively "far-off" localities in the States of New York, Pennsylvania and Massachusetts.

2. The roads which deliver milk and cream at Jersey City, Weehawken and Hoboken, N. J., are those of the defendants, the New York, Lake Erie & Western (now Erie and hereinafter so called) at Jersey City, N. J.; the Delaware, Lackawanna & Western (hereinafter called the "Lackawanna") at Hoboken; the Lehigh Valley at Jersey City; the New York, Susquehanna & Western (hereinafter called the "Susquehanna") at Jersey City; the New York, Ontario & Western (hereinafter called the "Ontario & Western") at Weehawken; and the West Shore at Weehawken. The defendant, the New York, New Haven & Hartford Railroad Company (hereinafter called the "New Haven") operates lines through Massachusetts and Connecticut to New York City. The Lehigh & Hudson River connects with and delivers milk and cream for Jersey City to the Erie at Greycourt on the main line. The Delaware & Hudson Canal Company (operating the Albany & Susquehanna Railroad), and the Elmira, Cortland & Northern Railroad Company, deliver milk shipped over their respective roads to the Lackawanna. The Elmira, Cortland & Northern has become part of the Lehigh Valley system since this proceeding was commenced, but such milk delivery to the Lackawanna has not been discontinued. The Lehigh & New England (formerly Pennsylvania, Poughkeepsie & Boston) appears to be operated as follows: That portion between Slatington, Pa., and Hainesburg Junction, N. J., by the Lehigh Valley, and the remainder, Pine Island Junction, N. Y., to Hainesburg Junction, N. J., by the Susquehanna. The Philadelphia, Reading & New England road connects with the Lehigh & Hudson River at Maybrook, N. Y., and with the Ontario & Western and Erie at Campbell Hall, N. Y. Milk is delivered by it to the Ontario & Western and carried by the latter to Weehawken. The Wallkill Valley and Ulster & Delaware roads deliver their milk traffic to the West Shore at Kingston, N. Y.

3. The milk shipping territories served by the defendant lines are described as follows:

Erie: The milk shipping station most distant from the milk terminal at Jersey City is Hornellsville, N. Y., 331 miles, and the milk station in New York State nearest to the terminal is Turner's, N. Y., 46 miles. The distance between such stations, both situated on the main line, is 285 miles.

On the Lehigh & Hudson River road, which delivers its milk to the Erie at Greycourt, N. Y., the milk station most distant from the terminal at Jersey City is Belvidere, N. J., 116 miles, and the shipping station on such connecting road nearest to the terminal is Sugar Loaf, N. Y., 57 miles.

The milk shipping stations in New Jersey located on the Erie line which are nearest to and farthest from the terminal are Langdon, 20 miles, and Mahwah, 29 miles. Milk originating on the Erie main line and branches is also transported from New York and Pennsylvania points to Jersey City, N. J. Shipments over the Lehigh & Hudson River connection originate both in New Jersey and New York, and are carried through New York and then through New Jersey to the terminal.

Susquehanna: The milk shipping station most distant from the terminal at Jersey City is Middletown, N. Y., 88 miles, and the milk shipping station in New York nearest to the terminal is Unionville, N. Y., 74 miles, the distance between such stations being 14 miles. This road also operates the portion of what is now known as the Lehigh & New England Railroad (formerly Pennsylvania, Poughkeepsie & Boston) between Hainesburg Junction, N. J., and Pine Island Junction, N. Y. The latter point is by this line about 79 miles from the terminal, and the station in New York State on such branch nearest to the terminal is Liberty Corner, about 75 miles. It does not appear that the Susquehanna receives any milk from New York stations on the Lehigh & New England branch.

The milk shipping stations in New Jersey which are nearest to and farthest from the terminal are Campgaw, 29 miles, and Hainesburg, 89 miles. The route of this line is through New York and New Jersey.

Ontario & Western: The milk shipping station most distant from the terminal at Weehawken, N. J., is Kenwood, N. Y., 264

miles, and the milk station nearest to the terminal is Cornwall, N. Y., 52 miles. The distance between such stations is 212 miles. Kenwood is on the main line. Milk is also shipped from branch line points in New York and Pennsylvania. The Pennsylvania branch extends from Hancock Junction, N. Y., to Scranton, Pa.

Milk is also received from two connecting roads, the Philadelphia, Reading & New England, and the Port Jervis, Monticello & New York. The shipping stations on these roads are not given. The point of connection with the Philadelphia, Reading & New England is at Campbell Hall, N. Y., 68 miles from the Weehawken terminal. This connecting road runs from Campbell Hall, crossing the Hudson River *via* the Poughkeepsie bridge, to Hartford, Conn. The distance from Campbell Hall to Highland on the Hudson River is about 28 miles. The other connection, the Port Jervis, Monticello & New York road, joins the Ontario & Western at Summitville, N. Y. The Ontario & Western has trackage rights over the West Shore from Cornwall, N. Y., to Weehawken, N. J., and does not carry any milk shipped from south of Cornwall.

Lackawanna: The milk shipping station most distant from the terminal at Hoboken, N. J., is South Columbia, N. Y., 310 miles, on the Richfield Springs branch of the Utica division, and the milk shipping station in Pennsylvania nearest to the terminal is Moscow, Pa., 136 miles. The distance between such stations is 174 miles. In 1894 some milk was carried by that road from Leicester, N. Y., to Hoboken, about 354 miles, but this was the only milk station west of Elmira, 264 miles from Hoboken. The testimony is that South Columbia is the most distant station for regular shipments.

On the Delaware & Hudson Canal Company's road, which connects with the Lackawanna at Binghamton, the milk shipping station most distant from the Hoboken terminal, is at or near Cobleskill, N. Y., 305 miles, and the milk station on such connecting road nearest to the terminal is Osborne Hollow, N. Y., 217 miles. Binghamton, the point of connection, is about 206 miles from the terminal. Milk is also shipped from two or three stations in New York located on the Wilkesbarre, Pa., branch of the Delaware & Hudson road. Some milk originates at Phoenixville and Coopers-town, N. Y., on the Cooperstown & Charlotte Valley road, which

is delivered to the Delaware & Hudson at C. & C. V. Junction, and by it in turn delivered to the Lackawanna at Binghamton.

On the Elmira, Cortland & Northern Railroad, which also delivers milk to the Lackawanna, it appears that the milk station most distant from the terminal is Shed's Corners, N. Y., 275 miles, and that the milk station on such connecting road nearest to the terminal is McLean, N. Y., 256 miles. The nearest point of connection with the Lackawanna for shipments from these stations is Cortland, N. Y.

The milk shipping station on the Lackawanna in New Jersey nearest to the terminal is Whitehall, N. J., 26 miles, and the farthest New Jersey milk points from the terminal are Washington, N. J., 71 miles, or Delaware, N. J., 80 miles, on the main line, and Franklin, N. J., 76 miles on the Sussex branch.

West Shore: This line, of which the New York Central & Hudson River is lessee, receives practically all its milk traffic at Kingston, N. Y., 87 miles from its terminal at Weehawken, delivery being made at Kingston by its connections, the Wallkill Valley and the Ulster & Delaware Railroads. The West Shore gets about 12 cans a day at West Park, 78 miles from Weehawken on the main line. The milk station on the Wallkill Valley most distant from the terminal is Campbell Hall, N. Y., 126 miles by this route, and the Wallkill Valley milk station nearest to the terminal is New Paltz, N. Y., 103 miles. The milk station on the Ulster & Delaware most distant from the Weehawken terminal appears to be Bloomville, N. Y., 175 miles, and the milk point on such connecting road nearest to the terminal is, from distance stated in testimony, Fleischmanns, N. Y., 132 miles.

The West Shore routes are through New York and New Jersey.

Lehigh Valley: The most distant milk shipping station from the terminal at Jersey City is about 340 miles. Romulus, N. Y., is a milk station on this line, 335 miles from Jersey City. The milk shipping station in Pennsylvania nearest to the terminal is Catasauqua, Pa., 94 miles. The distance between such stations is 246 miles. The first shipping station west of Catasauqua is La Grange, Pa., 195 miles from Jersey City. Milk shipped from a few points on the Montrose Railway in Pennsylvania is carried

by this road. The names of New Jersey stations at which milk shipments are received by this line are not shown.

New Haven: The milk shipping station most distant from the milk terminal of this road at Harlem River, New York City, is about 163 miles, and the milk point nearest to the terminal is about 72 miles. Practically all the milk traffic for this line originates on lateral roads. The New Haven milk lines run through western Massachusetts and western Connecticut to New York.

Intersecting Points: Campbell Hall, N. Y., is served by the Ontario & Western, Erie and Wallkill Valley (West Shore). Middletown, N. Y., is reached by the Erie, Ontario & Western and Susquehanna. Sidney, N. Y., on the Ontario & Western, is also reached by the Delaware & Hudson-Lackawanna line. Oxford, N. Y., is a crossing point of the Lackawanna (Utica division) and the Ontario & Western main line. Branches of the Erie, and Ontario & Western reach Uniondale, Pa., and other stations in the vicinity of Carbondale, Pa. The Lackawanna, Lehigh Valley and Erie lines each intersect with one or both of the others at Waverly, Elmira and other points in central New York. The Susquehanna crosses the Lehigh & Hudson River at Franklin Junction, N. J., and Sparta Junction, N. J., and reaches a branch line of the Erie at Pine Island Junction, N. Y. The Lackawanna also connects with the Lehigh & Hudson River at Franklin, N. J., and at Andover Junction, N. J.

During the season of navigation on the Hudson River, milk, principally from Orange County, is transported by a steamboat line from Newburgh and other river landings at a rate stated to be as low as 10 cents a can, and this competition diverts considerable quantities of milk from the defendant lines having stations within convenient teaming distance to the river. An electric car line operated between Walden and Newburgh, in Orange County, may be utilized for the transportation of milk to the Hudson River at Newburgh.

Excluding transportation wholly in New Jersey, the distances from the terminal of the nearest and farthest milk shipping stations on each line, and the distances between such stations, based on the foregoing description of milk routes, are as follows:

LINE.	MILK TERMINAL.	NEAREST STATION.	MILES FROM TERMINAL.	FARTHEST STATION.	MILES FROM TERMINAL.	DISTANCE IN MILES BETWEEN SUCH STATIONS.
Erle.....	Jersey City....	Turner's, N. Y.....	46	Hornellsville, N. Y. --	831	285
Lehigh & Hudson River ...	"	"		Belvidere, N. J.	116	70
Ontario & Western.....	Weehawken	Cornwall, N. Y.....	53	Kenwood, N. Y.	264	212
West Shore.....	"	West Park, N. Y.....	78			
Wallkill Valley	"	New Paltz, N. Y.....	103	Campbell Hall, N. Y..	128	23
Ulster & Delaware.....	"	Fleischmanns, N. Y.	132	Bloomville, N. Y.	175	43
Susquehanna	Jersey City....	Unionville, N. Y.....	74	Middletown, N. Y.	88	14
Lehigh Valley	"	Catasauqua, Pa.....	94	Romulus, N. Y.	335	241
Lackawanna.....	Hoboken	Moscow, Pa.....	136	South Columbia, N. Y.	310	174
Delaware & Hudson.....	"	"		Cobleskill, N. Y.	305	169
Cooperstown & Charlotte Valley.....	"	"		Cooperstown, N. Y. ...	291	155
Elmira, Cortland & Northern New Haven.....	"			Shed's Corners, N. Y..	275	139
	Harlem River, N. Y. City.	Newtown, Conn.....	73	Pittsfield, Mass.	163	91

All of the milk *via* the Susquehanna is short distance traffic. Although the most distant point on the Lehigh & Hudson River road is 116 miles from Jersey City, such distance is over that road and the Erie from Greycourt, and a much shorter route from Belvidere, N. J., the 116-mile point, is found in practicable lines to Jersey City *via* the Lehigh & Hudson River to Sparta Junction, N. J., and thence over the Susquehanna, a distance of about 93 miles; or by the Lehigh & Hudson River to Andover Junction, N. J., and from that point over the Lackawanna to Hoboken, 81 miles. From most stations on the Lehigh & Hudson River these lines would be wholly in New Jersey. Sparta and Andover Junctions, on the Lehigh & Hudson River, are located, respectively, 33 and 39 miles from Greycourt, and 29 and 23 miles from Belvidere. Campbell Hall, N. Y., the most distant milk point on the Wallkill Valley—West Shore route, is 126 miles from Weehawken by that line, and New Paltz, N. Y., the nearest milk station to Weehawken, is 103 miles; but Campbell Hall is reached by the Ontario & Western from Weehawken over a distance of about 68 miles, and by the Erie from Jersey City the distance to Campbell Hall is only 64 miles. Traffic from New Paltz *via* Campbell Hall and these shorter connections would be carried to the terminal stations over distances not exceeding 87 or 91 miles. On the other hand, practically all of the milk of the Ulster & Delaware, and the Lackawanna and Lehigh Valley outside of New Jersey, is, relatively considered, long-distance traffic. The milk traffic of the Erie and Ontario & Western is carried over both short and long distances. The New Haven gets no milk nearer than 72 miles from New York, and its most distant milk point as before stated is 163 miles.

4. From the testimony and documents in evidence, it appears that the extreme distances over which milk has been carried by the Erie, Ontario & Western, Susquehanna, Lehigh & Hudson River, Lehigh Valley and Lackawanna, at different periods, were as follows:

<i>Erie:</i>	1875-1884,	Port Jervis, N. Y.	87 miles
"	1884-1886,	Callicoon, N. Y.,	135 "
"	1886-1887,	Summit, N. Y.,	183 "
"	1888-1892,	Elmira, N. Y.,	273 "
"	1893-1895,	Hornellsville, N. Y.,	331 "
<i>Ontario & Western:</i>	Prior to 1881,	Summitville, N. Y.,	92 "
"	" " "	Hurley, N. Y.,	110 "
"	1881 to 1887,	Liberty, N. Y.,	118 "
"	" " "	Livingston Manor,	128 "
"	" " "	Walton, N. Y.,	179 "
"	" " "	Delhi, N. Y.,	196 "
"	" " "	Sidney, N. Y.,	202 "
"	1888-1892,	Randallsville, N. Y.,	244 "
"	1893-1895,	Kenwood, N. Y.,	264 "
<i>Susquehanna:</i>	1879-1895,	Middletown, N. Y.,	88 "
<i>Lehigh & Hudson River:</i>	1879-1882,	McAfee, N. J.,	74 "
"	1883-1895,	Belvidere, N. J.,	116 "
<i>Lehigh Valley:</i>	Carried none up to 1885.		
"	1885,	Three Bridges, N. J.,	49 "
"	1890-1891,	Began to extend the traffic.	
"	1894,	Romulus,	335 "
<i>Lackawanna:</i>	Confined to New Jersey traffic up to about 1886.		
"	1886,	Began to extend the traffic.	
"	1889,	Vicinity of Binghamton,	206 miles
"	1890-1893,	Extensions continued.	
"	1894-1895,	South Columbia,	310 "

Since the *Howell Milk Case* was instituted before the Commission in 1887, the Erie has extended its most distant milk point 148 miles, and in point of distance from the terminal the extension on the Ontario & Western has been 62 miles. This takes no account of extended branch line service within such total distance. As stated above, and shown in a table hereinafter set forth, nearly all the Lackawanna and Lehigh Valley traffic has been acquired since 1887.

5. Rates for the transportation of milk (including buttermilk) and cream to Jersey City, Hoboken or Weehawken are, per 100 pounds or can of 40 quarts, 32 cents for milk and 50 cents for cream from all milk shipping stations on each of the defendant lines having terminals in those cities. These rates are charged regardless of the distance carried or the greater or less service rendered, the single exception being that the rates over the Lehigh Valley Railroad from points in New Jersey to Jersey City are 28 cents per can of milk and 40 cents per can of cream. Pot cheese in 40-quart cans is carried by the defendant lines at the 32-cent rate.

Shipments of milk or cream are also made in ^{by} ~~in~~ bottles, packed in cases of 12 bottles and upwards. The bottle generally used contains one quart. Very few of the pint size are used. The rates

on bottled milk and cream on the lines to Jersey City, Hoboken or Weehawken are the same per quart as those charged on shipments in cans, that is to say, the rate of 32 cents per can of 40 quarts of milk being equal to $\frac{1}{4}$ of a cent per quart, the transportation charge on a 12-quart case of bottled milk is also of a cent a quart, or 9.6 cents for the case. The charge on a 15-quart case is 12 cents. Cream in bottles is carried at the can rate of $1\frac{1}{4}$ cents per quart, amounting to 15 cents per 12-quart case, and $18\frac{3}{4}$ cents for a 15-quart case. The "standard" case is 12 quarts. The bottled milk traffic began 8 or 9 years ago, and large quantities of milk and cream are now shipped by that method. The transportation charge on a can of milk is 32 cents, whether the can contains 40 quarts or a less quantity, and 50 cents is also the minimum rate on cream in cans. The can generally used for the shipment of milk and cream over the defendant lines is of metallic construction, contains 40 quarts, and weighs when full about 100 pounds. The weight of the empty can is about 20 pounds. The case for bottled milk, constructed of wood, is about 24 inches long, 12 inches wide and 12 inches high, partitioned inside so as to provide a protected space for each bottle. There is room at the top to cover the bottles with ice. The bottled milk is iced except during the cold season. Some of the cases have lids. These cases become water soaked from the use of the ice, and this adds to the weight. The car floor is injured materially by the drippings from ice used for the box milk. The 12-quart case weighs from 70 to 75 pounds when full and iced, and 30 to 40 pounds empty. The 15-quart case weighs 100 pounds filled and, approximately, 50 pounds empty. According to these weights, the lines delivering at Jersey City and other New Jersey terminals in transporting 40 quarts of milk carry 100 pounds' weight when the shipment is in cans and from 233 to 266 pounds' weight when the milk is bottled. For the same price they render from $2\frac{1}{3}$ to $2\frac{2}{3}$ times the weight carrying service in hauling bottled milk that they do in transporting milk in cans. The box or case milk may be piled up in the car, while but little more than the floor space of the car can be utilized for can milk. Thus, on the Erie, one of the milk cars in use will carry about 430 standard 12-quart cases of bottled milk, while the maximum load of can milk is 260, and the floor capacity is about 240 cans. Such additional

loading as to number of packages in favor of bottled milk is, however, much more than overcome by the greatly increased non-revenue paying weight which must be hauled. The weight of the full carload of box milk is about 3 tons heavier than the carload made up of 240 cans. The carload of can milk contains 9,600 quarts as compared with 5,160 quarts in the carload of bottle milk, and the total railway charge at the present rate would be \$76.80 for the car of milk in cans as against \$41.28 for the bottled article. In other words, 86 per cent more revenue paying load and the same amount of additional revenue is furnished by the carload of 240 cans. The average carload of milk on the Erie in 1894 was 155 cans, and on the Lackawanna it was 160. A car of 160 cans of 40 quarts furnishes a car revenue of \$51.20, or \$9.92 in excess of an Erie carload of box milk, and the weight carried would be about 15 tons of boxed milk as against 8 tons of can milk. The car revenue on 240 cans of cream would be \$55.50 more than the revenue from a maximum carload of 430 12-quart cases of cream, and 160 cans of cream would still bring the carrier a greater return by \$15.50 than the full carload of boxed cream. The great bulk of the milk traffic is in cans. Milk and cream in cans and bottles are picked up in less than carloads at the great majority of shipping stations; there are few, if any, carload shipments.

The rates charged on this traffic from all points on the New Haven road to Harlem River station, New York City, are 25 cents per 40-quart can, 22½ cents per 30-quart can, and 20 cents per 20-quart can, of either milk or cream, and the charge made by that carrier for bottled milk or cream is 1 cent per quart. Provision is made, however, for a minimum charge of 30 cents. These rates are not exceeded on shipments to intermediate points. Three or four years ago the 40-quart can rate was 30 cents.

The rates charged over the defendant lines to New Jersey terminals for carrying milk and cream are, and for a number of years have been, fixed by agreement between representatives of the different lines engaged in the transportation, and changes made in the rates on any of the lines have been contemporaneously put in effect on the others.

6. The rates thus uniformly in effect from July 1, 1877, to this

date on "lines west of the Hudson River," as contained in an exhibit prepared by the defense, are set forth below:

TIME.	MILK. 40-qt. cans.	CREAM. 40-qt. cans.
July 1, 1877, to April 30, 1879.....	55	60
May 1, 1879, to March 31, 1881.....	40	60
April 1, 1881, to December 31, 1883.....	40	45
January 1, 1884, to January 26, 1885.....	27½	45
January 26, 1885, to January 31, 1886.....	32	45
February 1, 1886, to January 14, 1890.....	35	45
January 14, 1890, to April 1, 1892.....	32	42
April 1, 1892, to date.....	32	50

Up to 1887 or 1888, the Ontario & Western charged higher milk rates from points north of Bloomingburgh, 87 miles from Weehawken, than from stations south of that place. The difference was 5 cents a can from July, 1879, to January 28, 1885, and 3 cents after the last-mentioned date. The rates charged on what is known as the Harlem Railroad, part of the New York Central system, and lying wholly in the State of New York, are 30 cents on milk and 40 cents on cream or condensed milk per 40-quart can, and the bottled milk rates are 12 cents per 12-quart case and 20 cents per 20-quart case. On the Central Railroad of New Jersey, the rates from New Jersey points to Jersey City are 28 cents on milk and 40 cents on cream per 40-quart can or less, and 10 cents per 12-quart case or less of bottled milk. The milk rate on the Long Island road is $\frac{3}{4}$ of a cent per quart on milk in cans or bottles from all of its stations to Brooklyn or New York City. The rate of 27½ cents per can, mentioned in the above table as in effect over lines west of the Hudson River in 1884, is stated in a decision of the New York Railroad Commission in a case entitled *Stevens against the New York, Lake Erie & Western R. R. Co.*, July 29, 1884, as having been put in by the Erie to meet the reduction from 45 to 30 cents per can recommended by that Board in the milk rate on the Harlem road in 1883, and complied with by that carrier.

7. The rates charged on milk and cream cover the return of cans and cases of bottles to shipping points on all the defendant lines. On the return trip, cans as well as cases may be piled or tiered, but this must be done so that those for each station will be in place convenient for unloading. One or more trains are

regularly run by each of the lines delivering at New Jersey terminals, and the cars composing each train must, as a rule, all be sent back the next day to shipping points. With the same number of cars going each day for new loading and carrying empty cans and cases conveniently placed in the cars for distribution, it is not apparent that material saving in transportation cost can result from loading the empties in the smallest number of cars. The return of empty cans and cases to shippers on the defendant lines is a necessary part of the service in milk transportation, and is rendered by the carrier without additional compensation. This return of cases and cans by the carrier includes carriage and handling at both the delivering and shipping points, and the regular milk trains to New Jersey terminals go back usually without other loading than the returned packages.

8. Following is a table showing the annual and total quantity of milk, cream and condensed milk, reduced to units of 40-quart cans, received in the New York market during the 10 years, 1886 to 1895, inclusive, the amount carried by each line, and the increased or decreased percentage of each; also the average daily receipts, with the yearly and ten-year per cent of increase:

FROM THE "MILK REPORTER."

Railroads.	1886.	1887.	1888.	1889.	1890.	1891.
Erie.....	1 451,523	1,512,372	1,536,703	1,594,129	1,694,158	1,751,319
Harlem.....	922,151	955,985	972,458	1,041,593	959,288	851,042
Ontario.....	527,169	537,381	592,348	631,410	760,804	888,875
Susquehanna...	476,987	530,872	557,777	548,708	543,287	551,874
Northern.....	461,484	487,087	454,927	439,194	484,388	413,853
West Shore.....	281,954	371,160	408,538	425,794	474,203	564,989
New Haven.....	425,224	449,735	354,074	322,910	289,954	217,265
D., L. & W.	140,300	168,750	265,650	338,981	485,310	949,578
Long Island.....	159,332	148,530	144,855	141,045	123,657	113,043
New Jersey Cent.	167,658	190,330	182,315	187,070	167,225	126,651
*Ramsdell Trans- portation Co....		185,842	250,645	315,905	274,025	242,919
†Lehigh Valley..						9,231
Other sources....	435,830	277,320	300,900	289,350	233,975	252,750
Total.....	5,449,612	5,814,864	6,021,185	6,276,084	7,480,119	6,932,788
Per cent of yearly increase		06.7	03.55	04.23	08.25	06.98
Daily average....	14,930	15,931	16,451	17,195	17,754	18,994

Railroads.	1892.	1893.	1894.	1895.	Total cans Carried During 10 years.	Per Cent. Increase or Decrease.
Erie.....	1,778,508	1,662,058	1,613,309	1,534,866	16,128,940	05.7 inc
Harlem.....	798,009	830,027	845,017	880,635	9,056,150	04.7 dec
Ontario.....	1,050,924	1,095,484	1,167,809	1,270,937	8,522,641	141.0 inc
Susquehanna...	534,287	643,492	658,297	685,209	5,730,785	43.6 inc
Northern.....	376,203	355,230	279,827	222,670	3,924,763	51.7 dec
West Shore.....	567,425	479,916	486,667	472,598	4,532,844	67.6 inc
New Haven.....	153,529	255,784	284,833	286,491	3,039,799	32.6 dec
D., L. & W.	1,394,250	1,525,067	1,649,773	1,897,135	8,814,794	1252.0 inc
Long Island.....	187,150	71,989	57,217	50,380	1,197,197	68.3 dec
New Jersey Cent.	83,623	75,879	75,998	85,079	1,331,828	49.2 dec
*Ramsdell Trans- portation Co....	267,175	268,963	280,908	250,864	2,336,746	35.3 inc
†Lehigh Valley..	58,954	72,774	123,938	172,726	437,623	193.0 inc
Other sources....	217,950	216,650	215,250	217,450	2,707,325	50.0 dec
Total.....	7,467,987	7,552,913	7,738,843	8,027,040	67,761,435	47.3 inc
Per cent of yearly increase	07.72	01.14	02.46	03.72		
Daily average....	20,404	20,693	21,202	21,992		

*Hudson River Boat Line.

†Percentage of increase figured from 1892, as our report for 1891 included but 3 months.

The table covers the supply of *plain condensed milk* as well as fluid milk and cream.

It appears by these figures that the supply of milk and cream for the New York market (and this is understood to include adjoining cities) increased from less than $5\frac{1}{4}$ million cans in 1886 to over 8 million cans, or, exactly, 321,081,600 quarts in 1895. Such increase was 47.3 per cent, or about $2\frac{1}{4}$ million cans, and the daily average in 1895 was about 7,000 cans in excess of that for 1886. The total population of New York, Brooklyn, Jersey City and Hoboken in 1885, 1890 and 1895, testified to as stated in Census Reports or shown in estimates based thereon, was 2,226,513 in 1885, 2,530,995 in 1890, and 3,113,189 in 1895. The increase in the population of these cities has therefore been nearly 900,000 in 10 years. On a population basis of $2\frac{1}{4}$ millions in 1886 and 3,113,189 in 1895, the delivered milk supply per capita was about 96.88 quarts for 1886 and 103.13 quarts in 1895, an increase of $6\frac{1}{4}$ quarts for each person.

According to the above table, the defendant lines carried very nearly $78\frac{1}{4}$ per cent of the entire New York milk supply in 1895. This amounted to 6,319,962 cans of 40 quarts, and of this quantity the Erie, Lackawanna, Susquehanna and Ontario & Western transported 5,388,147 cans, or more than 85 per cent. These four delivering companies with their connections carried in that year over 67 per cent of the total supply. The volume of this traffic on both the Erie and West Shore has been decreasing since 1892. The quantity carried by the Erie was 243,642 cans less in 1895 than in 1892, and the West Shore milk traffic in 1895 was 94,827 cans less than in 1892. The quantity annually carried by the New Haven road decreased nearly two thirds between 1886 and 1892, but it has increased since, so that it showed in 1895 a decrease as compared with 1886 of only about one third. There were slight decreases between 1888 and 1892 on the Susquehanna, which have been more than recovered since the latter year. The Lackawanna and Ontario & Western milk traffic has continued to increase yearly since 1886. As the table shows, the Ontario & Western increase in 10 years was 141 per cent, and that of the Lackawanna was from 140,300 cans in 1886 to 1,897,135 cans in 1895, or 1252 per cent. About three fourths of the Lackawanna milk and cream business in 1895 was acquired subsequent to 1890.

The "Milk Reporter" shows that 7,729,064 cans of milk,

222,157 cans of cream, and 75,819 cans of condensed milk were brought to the New York market in 1895, the figures being on the basis of 40 quarts to the can. For 1894, the figures so published were 7,479,273 cans of milk, 210,269 cans of cream, and 67,302 cans of condensed milk.

9. The average yearly prices per quart paid by receivers of milk in New York from 1870 to 1895, inclusive, are given below in connection with the freight rate in force from 1877:

Years.	Price. Cents per Qt.	Freight Rate. Cents per Can.	Years.	Price. Cents per Qt.	Freight Rate. Cents per Can.
1870	4.58		1888	3.15	40
1871	3.83		1884	3.06	27.50
1872	3.67		1885	2.77	32
1873	3.75		1886	2.80	35
1874	3.65		1887	2.81	35
1875	3.54		1888	2.63	35
1876	3.38		1889	2.59	35
1877	3.15	55	1890	2.63	32
1878	2.63	55	1891	2.67	32
1879	2.33	40	1892	2.68	32
1880	2.85	40	1893	2.79	32
1881	2.98	40	1894	2.63	32
1882	3.25	40	1895	2.52	32

These prices do not include freight charges. For example, the "exchange price" in January, 1894, was 3 cents per quart, equal to \$1.20 per can of 40 quarts, while the "platform price" on the Erie platform at Jersey City was generally \$1.52 per can in that month, or the freight rate of 32 cents higher than the "exchange price." The platform price is liable to vary according to the day's supply and demand. The freight rate of 32 cents per 40-quart can is at least 25 per cent of the price paid to producers. The price of milk to New York City consumers is not uniform. The price generally charged for delivering to families is about 8 cents a quart; to boarding houses, 6 or 7 cents. A 40-quart can of milk sells for from 4 to 5 cents a quart, the price being lower in summer and higher in winter. When the market is over supplied, milk on that day is sold very cheap. The bottle milk brings usually from a quarter to half a cent more per quart. One witness (Baldwin, a wholesale dealer) testified that more milk is retailed in New York City at 5 cents a quart than above it. Ten years ago the price to families was about 10 cents. Thirty years ago it was as high as 14 cents a quart. In deter-

mining the value in New York City, it has been the custom to add to the freight rate and market price 5 cents a can for ferry and trucking from Jersey City to New York. Thus a can of 40 quarts selling on the Erie platform in Jersey City for \$1.32 would be rated at \$1.37 in New York. There is testimony to the effect that this 5 cents was sometimes deducted from the market price before settlement between consignee and producer, but such deduction is not shown to have been the rule.

In 1877 and 1878, while the freight rate was 55 cents the average price per quart to producers fell from 3.15 cents to 2.63 cents. In 1879, with the rate at 40 cents, the price fell to $2\frac{1}{8}$ cents a quart. From 1879 to 1883 the rate remained at 40 cents, and the price per quart rose steadily each year from $2\frac{1}{8}$ cents in 1879 to $3\frac{1}{4}$ cents in 1882; but in 1883 it fell to 3.15, and for the year 1884, while the rate was as low as $27\frac{1}{2}$ cents, the price declined to 3.06 cents. In 1885 with the rate raised to 32 cents the price declined to 2.77 cents, rising to 2.80 cents per quart in 1886, when the rate went to 35 cents, and remaining about 2.80 per quart until 1889, when with the same rate it fell to 2.59. Since 1889, with the rate at 32 cents, the quart price has fluctuated from 2.52 to 2.79, the lower figure being the average price for 1895. The price generally paid by dealers to producers in the "far-off" region ranges from $\frac{1}{4}$ to $\frac{1}{2}$ cent less than the market price. For a number of years and up to the early part of 1895 the price paid to producers was fixed by the "New York Milk Exchange," but this was discontinued upon a decision in the State court that the Exchange was an illegal combination. The evidence tends to show that the prices paid different producers since that Exchange was discontinued are less uniform. Numerous conditions surround the production, supply and demand for milk, many of which are varied by the season and the character of the season, as well as by added sources of supply and changes in the course of handling or dealing, and the effect of increases or reductions in the uniform freight rate upon prices paid to producers is not shown through comparison of the freight rate and prices so paid during each year. But the general tendency of both such price and rate has been downward. The price to farmers in 1876 was 3.38 cents; in 1882, 3.25 cents; in 1888, 2.83 cents; in 1893, 2.79 cents; and the price for any of those years has not been equalled

since. In 1876 the freight rate was 55 cents or more; in 1882, 40 cents; in 1888, 35 cents; in 1893, 32 cents; and this rate, which is still in effect, is lower than at any former time except during the year 1884. The wholesale and retail prices of milk are also lower than in former years. The transportation charge on milk, whether paid by consignee or shipper, whether included in or deducted from milk prices paid to producers, is part of the cost of marketing, and such cost is therefore reduced by a decrease in the freight rate.

10. The following table shows for the years 1885 to 1895, inclusive, the number of quarts of milk at average price for the year necessary to equal the average price for that year of a pound of butter in the New York market:

YEARS.	QUARTS.	YEARS.	QUARTS.
1885.....	9.75	1891.....	9.70
1886.....	9.50	1892.....	9.70
1887.....	9.55	1893.....	9.60
1888.....	9.60	1894.....	8.80
1889.....	9.20	1895.....	8.50
1890.....	8.90		

The average price of butter in 1894 and 1895 was considerably lower than in 1893, and the shipment of milk for the New York trade, as compared with butter for that market, was more profitable in 1895 than in 1893, by at least the producing value of one quart of milk to the pound of butter.

11. Transportation rates on milk and cream are not the same from all points of shipment to Philadelphia, Baltimore, Boston or Chicago. The rates are graded on the basis of distance or are the same from stations in short distance groups. The service for each city is widely different from that to New York terminals, much of it being performed in connection with general freight or passenger service and prepaid by the purchase of milk tickets prior to shipment. It does not appear that milk is transported to these cities over such considerable distances as is the case with milk for New York.

From tariffs of various roads in evidence, it appears that milk rates to Chicago are established by each with little reference to rates of the other carriers to that city. The rates on 8 and 10 gallon cans on the Erie (Chicago & Erie) are 12 and 15 cents up

to 24 miles; 15 and 25 cents for from 25 to 44 miles; 20 and 30 cents for 45 miles and over. On the Chicago & Northwestern (Galena Division, Air Line) for 8 and 10 gallon cans the rates are graded upward from 15 and 19 cents, respectively, with some short distance groups, the first being for stations 30 miles or under from Chicago, two following of 15 miles each, then with increases for succeeding stations until a distance out of 80 miles is reached at Ashton, Ill., from which point and all stations west, including Clinton, Ia., 138 miles, the rates are 22 and 26 cents. These are the highest can rates on this road to Chicago. Rates on bottled milk begin with 10 cents for the 12-quart case and 16 cents for the 18-quart case for the first 15 miles, increasing gradually to 17 and 25 cents for the Ashton-Clinton group. From that group this company charges within 1 cent as much for 18 quarts in bottles as it does for 40 quarts in cans. On the Chicago, Milwaukee & St. Paul Railway the rates also commence with 15 and 19 cents for 8 or 10 gallon cans, respectively, and, graded both by short distance groups and station to station increases, reach 28 and 32 cents, respectively, at Kittridge, Ill., on the Council Bluffs line, 117 miles from Chicago, and 25 and 29 cents on the "Northern Division" at Fond du Lac, Wis., 161 miles from Chicago. The Chicago & Alton rates range from 13½ cents per can at Summit, 12 miles out of Chicago, increasing 1 cent or ½ cent with each station. The highest rate, 26 cents, is from McLean, Ill., 141 miles from Chicago. The Illinois Central rates for 8 and 10 gallon cans grade from 15 and 19 cents up to 22 and 26 cents, and those of the Chicago, Burlington & Quincy from 15 to 25 cents per 8-gallon can. On all these roads the freight is prepaid, the shipper being required to purchase milk tickets and attach a ticket to each can before delivery for transportation.

ERIE LINE.

12. The total amount of milk and cream brought by the Erie to Jersey City in 1894 was 1,297,505 cans and 729,280 boxes of milk, 77,509 cans and 2,164 boxes of cream, on which the total freight revenue was \$523,484.10. The Erie share of this total was \$484,093.24. From a statement in evidence of milk traffic on the Lehigh & Hudson River it appears that the receipts of that road from this milk traffic for 1894 amounted to \$45,773.68,

and that rates are divided between it and the Erie on the basis of 40 per cent to the Lehigh & Hudson River and 60 per cent to the Erie. This deducted from the above stated total milk revenue would make the Erie receipts \$477,710.42. The 1894 revenue of the Erie from milk traffic on its Delaware Division, running west from Port Jervis to Susquehanna, was \$79,387.34; from the Susquehanna Division, Susquehanna to Hornellsville, it was \$30,208.95, and from points on the Jefferson or Carbondale branch, it was \$6,233.70, making a total west of Port Jervis of \$115,829.99. The remainder of the total milk revenue for 1894, \$407,654.11, was derived from shipments east of Port Jervis. On the basis of milk business from points on the Lehigh & Hudson River amounting to \$114,434.20, as indicated by the statement filed for that company, the traffic originating on the Erie main line and branches east of Port Jervis amounted to \$293,219.91. Of this, \$116,990.83 was main line business, leaving \$176,229.08 for traffic from branches of the eastern division. The foregoing distribution of the Erie milk revenue for 1894 is based upon totals given in testimony. Analysis of the statement of traffic by stations, filed for the Erie, four stations not located, shows totals somewhat less for the eastern branches and the lines west of Port Jervis, and a little more revenue from the main line traffic east of Port Jervis. Included in the figures above given are earnings on milk carried to Newark, Passaic and Paterson, N. J., in 1894, to the amount of about \$11,190.76. The rates of 32 cents on milk and 50 cents on cream are charged whether the freight is consigned to Jersey City or carried between local stations.

The Wells Fargo Express Company, which conducts the express business on the Erie lines, charges, according to agreement with the railroad company, double the railroad rates for carrying milk, cream and garden products within the milk-train limits; thus, the express rates on milk and cream are 64 cents and \$1, respectively, the delivery being to consignees' places of business in New York City. The express charges on merchandise traffic, the highest class of express business (money excepted) are about double the railroad freight rates. Potatoes, onions, apples and other agricultural products usually have considerably lower special express rates. The express company carries about 5 cans of milk and cream daily.

The branch lines east of Port Jervis are: Two to Newburgh, one from Turner's, 15 miles, and another from Greycourt, 19 miles; the Pine Island and Montgomery branches, 12 and 10 miles in length, respectively, connecting with the main line at Goshen; and the Middletown & Crawford branch, 13 miles, leading from Middletown to Pine Bush. Except three stations in New Jersey, all the main line milk traffic in 1894 east of Port Jervis originated at Turner's and stations between that point and Port Jervis. The distance between Turner's and Port Jervis is 41 miles. These main and branch line distances are all in Orange County, New York. Nearly 80 per cent of the total milk traffic of the Erie in 1894 originated east of Port Jervis on the main line and branches and the Lehigh & Hudson River connection, and over 55 per cent was from main and branch lines in Orange County. Prior to the construction of these branch roads butter was the principal agricultural product of that county. The branches were built with a view of penetrating this dairy region, and with the facilities thus furnished for milk traffic, the making of butter was largely discontinued. The Ramsdell Transportation Company's boat line on the Hudson River, touching at Newburgh, Cornwall, and other landings, has carried, at times, as much as 1,000 cans a day from Newburgh alone. This river competition affects traffic at stations 15 or more miles from the river, but it has not resulted in causing the reduction of railroad rates on milk from the localities affected. The Erie bought out a large creamery at Washingtonville, Orange County, mainly to prevent the milk business at that point from going by the river.

The following statement shows the amount and increase of milk and cream from points west of Port Jervis from September 30, 1891, to 1895:

Year	Cans, 40 qts.	Gallons boxed.	Total reduced to cans of 40 qts.	Yearly increase or decrease.
1891	199,860	585,139	257,874	Increase.
1892	229,677	712,994	300,976	43,102
1893	252,864	735,956	326,460	25,484
1894	283,211	676,767	350,888	24,428
1895	268,897	652,225	334,120	Decrease 16,768
Increase in 1895 over 1891.	69,537	67,086	76,246	

The increase on the Lehigh & Hudson River connection in 1894 over 1891 was 1,021 cans. The total milk, cream and condensed milk traffic of the Erie in 1894, reduced to cans, was 1,613,309 cans, and in 1892 it was 1,778,508 cans, a loss in two years on the whole traffic of 165,199 cans. The total of the west of Port Jervis and Lehigh & Hudson River milk traffic was 713,565 cans in 1894 and 660,325 cans in 1892. These figures leave for the Erie main line and branches east of Port Jervis 899,744 cans in 1894 and 1,118,183 cans in 1892, showing a loss in two years in traffic originating on the Erie east of Port Jervis of 218,439 cans, over 19½ per cent of the shipments so originating in 1892.

This result may be increased or decreased somewhat by the fact that the figures used for west of Port Jervis traffic are for years ending September 30, those for the calendar year not having been given, and that a few thousand cans of condensed milk are included in the totals used for 1894 and 1892. The total milk traffic of the Erie in 1895 was less than in 1894 by 78,443 cans, and the decrease in west of Port Jervis milk for the year ending September 30, 1895, compared with the year preceding, was 16,768 cans. This indicates a further loss on the Erie lines east of Port Jervis in 1895 of about 61,675 cans, and a total loss since 1892 of about 280,114 cans, unless the loss as compared with 1894 was made up by increase in shipments on the Lehigh & Hudson River. The annual supply from Lehigh & Hudson River points was about equal during the four years prior to 1895. Such decrease since 1892 is not to be ascribed to the competition of the Hudson River Boat Line, the number of cans carried by the boats in 1895 having been about equal to the quantity carried by them in 1891 and 1892, and 30,000 cans less than in 1894.

Milk, buttermilk and cream are brought by the Erie to Jersey City in two daily milk trains usually composed of 13 milk cars and one combination car which will seat 35 or 40 persons in one of the compartments, the other compartment being used for clerical work pertaining to the milk business. The train employees are carried in this car. Some passengers are transported west-bound between local stations on one of the trains, and east-bound on Sunday only by both trains. No other traffic is carried on these trains. One train, No. 18, starts from Port Jervis at 6:50

P. M. and arrives at Jersey City at 11:15 P. M., making the distance of 87 miles in 4 hours and 25 minutes, or about 20 miles an hour, including numerous stops above Turner's. No. 20, the other train, starts from Pine Island Junction on the Pine Island Branch at 6:55 P. M. and reaches Jersey City at 11:00, covering the 70 miles in about 4 hours at the rate of $17\frac{1}{2}$ miles per hour, including stops. Milk originating on the Lehigh & Hudson River road and the branches other than the Pine Island is brought to the main line junctions and hauled from thence to the terminal in these trains. Considering the greater number of stops, these trains run at about passenger train speed and usually arrive in Jersey City "on time." In the operation of the road they have the same rights as passenger trains.

Seven cars of milk are brought down to Port Jervis daily: Two from the Susquehanna Division, Hornellsville to Susquehanna; four from the Delaware Division, Susquehanna to Port Jervis; one from the Jefferson or Carbondale branch. This west of Port Jervis milk is carried to Jersey City in milk train No. 18, leaving Port Jervis at 6:50 P. M. The service west of Port Jervis is by passenger train. The ice used is, as a rule, furnished by shippers. The total expense to the company for this item in 1894 was only \$79.46. It does, however, haul ice for shippers from ponds to their ice houses and creameries at low rates. The company heats the cars in winter when necessary. The icing of can milk shipped from the near-by stations is not permitted by the carrier.

There are employed in the conduct of the two regular milk trains, the one from Port Jervis and the other from Pine Island Junction, four engineers, four firemen, four conductors, four flagmen, and thirty brakemen; fourteen brakemen to one train and sixteen for the other, and the engineers, firemen, conductors and flagmen are two to each train. One crew composed of one conductor, one engineer, one fireman, one flagman, and seven or eight brakemen, according to the train, makes a round trip and lays off, another like crew making the next trip. The engineers and firemen are paid the same as passenger engine men. This is in some cases more than the pay of freight engine men. The conductors on milk trains get \$13.00 per month more than freight train conductors, and the brakemen are paid the same as brakemen on

freight trains. The milk trains remain at Jersey City until 5 and 6 o'clock A. M., when, having been loaded with cans, they return to Port Jervis and Pine Island Junction, making the same stops going back to unload the empties. The returning trains are numbered 17 and 19. The milk train locomotives are heavy and similar to those used on through passenger trains, but while the milk trains require the use of four engines the same four are not exclusively devoted to that business. The cost of the milk car used is about \$1,500; that of an ordinary box car is about \$450. The life of the milk car is about ten years, while that of the box car is stated to average fifteen years. The Erie has 26 milk cars in constant use, but it keeps 11 others on hand at various sidings to be ready in case of accident or extra demand.

The company has erected separate stations and platforms exclusively for the milk business at a considerable number of points and put in sidings for that traffic at some of the larger stations. There are two large milk platforms at Jersey City, and a third is also used for that business in connection with general traffic.

13. The estimated cost of transporting the milk and cream business of the Erie in 1894 is stated to be \$108,603.72 of which \$26,971.72 are assigned to the business west of Port Jervis and the remainder, \$81,632 to the service east of that point. It does not affirmatively appear that this stated total cost includes all the branch line service east of Port Jervis. Comparison of this cost with estimated cost of doing the business by ordinary freight trains is presented in a statement filed for the Erie in reply to interrogatories propounded by complainant. Train mileage and some car mileage were used in the computation. The result reached through such comparison and claimed in the Erie statement is that east of Port Jervis the milk traffic could be carried in the ordinary freight service for \$18,940.16, as compared with \$81,632, the stated actual cost of the present service, and another calculation based on such figures is that the milk traffic as conducted costs the carrier $12\frac{1}{8}$ cents per carload per mile, while as ordinary freight such carload would only cost it at the rate of 2.9 cents per mile; in other words, that the transportation cost of the milk traffic east of Port Jervis is about $4\frac{1}{4}$ times what it would be if carried as ordinary freight. Besides the stated cost of transporting the milk, there is an additional expense of handling at the

terminal which is stated at \$11,388 and a milk agent is employed at \$3,000 per year. These various items foot up a total transportation cost of \$122,990.72, leaving an income over cost of transportation and terminal handling of about \$361,102.52. The share borne by this traffic of general expenses and maintenance of way, structures and equipment is also to be deducted to arrive at net income from operation. In making up an estimate of total cost of the milk traffic to the road the operating expenses and fixed charges applicable to milk traffic are determined by complainant according to the proportion of the milk tonnage to total tons carried, while for the same purpose the carrier adds some claimed terminal expenses to stated cost of transportation and uses the train mileage basis for the remaining operating expenses and fixed charges, resulting in a profit or net income of something less than 300 per cent on complainant's theory and about 10 per cent by the carrier's method of computation.

The expense of running an all-night ferry boat to accommodate milk dealers, claimed by the carrier as an additional item of cost, represents no part of the Erie expense in transporting milk for which rates to Jersey City are charged; such ferry boat expense relates to a distinct service for which the company is entitled to and does make a separate charge.

For the lines east of Salamanca fixed charges were apportioned for the year ending June 30, 1894, to the amount of \$7,493,307, including interest on funded debt and interest-bearing current liabilities, rents for lease of road, taxes, and \$9,643 "other deductions." This added to the total operating expenses on all business amounted to \$20,774,610, and exceeded the total gross earnings from operation by \$692,633. The estimate of cost submitted by counsel for the Erie Company shows, after making deductions for all claimed expenses and for fixed charges, a net profit from milk of \$49,726.31. The Erie's estimate of \$26,971.72, cost west of Port Jervis, applies to the carriage of about 20 per cent of its milk traffic, and \$81,632, stated cost of the milk train service east of that point, applies to the carriage of all the milk business by such trains to Jersey City. Upon this basis the cost of handling a can of milk west of Port Jervis by mixed train service is greater than the cost of transporting a can of milk by regular milk trains east of that point.

The foregoing figures pertaining to cost of the milk service are for the calendar year 1894. As the amount of milk business on the Erie for 1893 was a few thousand cans greater than in the succeeding year, and there was no substantial difference in the service rendered, the earnings for the calendar year 1894 were not greater, and the expense of the milk service was not materially different, than for the year ending June 30, 1894, the fiscal year for which annual reports covering the Erie system are filed with the Commission.

The total operating expenses for the year ending June 30, 1894, on the Erie lines east of Salamanca, N. Y. (82 miles west of Hornellsville), were \$13,281,303.00, covering general expenses, conducting transportation, maintenance of equipment and maintenance of way and structures; and the gross earnings of such lines from passenger, freight and miscellaneous service, including stockyards and elevators, were, for the same period, \$20,081,977.00, leaving a net operating income of \$6,800,674. These operating expenses were 66.14 per cent of the gross earnings. The Erie earnings from milk of \$484,093.24 were about 2.41 per cent of the above stated total gross earnings, and such percentage of total operating expenses is \$326,079.40. This leaves a net income from operation of the milk traffic of \$158,013.84, on the basis of cost according to the proportion of milk earnings to gross revenue. The use of either train mileage, tonnage or earnings as a basis for estimating cost excludes the other two important items from the calculation. While the true cost of conducting transportation only by the separate milk trains may be stated with some degree of accuracy, it is impossible to arrive at the actual expense involved in the carriage of that commodity from all points of shipment, or to determine the share properly borne by milk in total operating expenses or in any statement of fixed charges, and this is true as to any particular kind of traffic.

Following is a comparison of average rates per ton, rates per ton per mile, car and locomotive earnings, empty car mileage, average number of loaded cars to the train and average load per car for milk and freight traffic generally:

A. According to the number of cans and cases of milk and cream carried by the Erie in 1894, and the estimated weights of 100 lbs. per can of 40 quarts and 70 lbs. per case of 12 quarts, the

total Erie milk tonnage was a little less than 95,000 tons, and this divided into the milk receipts of that company for the year gives an average revenue per ton of about \$5.10, more than five times the average of 97.767 cents per ton received for the year ending June 30, 1894, on all freight.

B. The average revenue per ton per mile reported for all freight carried over the Erie line east of Salamanca for the year to June 30, 1894, was 6.30 mills. On the basis of the Port Jervis distance of 87 miles, which exceeds the distance haul of the bulk of milk carried by this line, the rate per ton per mile received for milk at 32 cents per 100 pounds is over 7.35 cents, and doubling the distance on account of service in returning the cans, the rate still yields 3.68 cents per ton per mile, more than $5\frac{1}{2}$ times the average for all freight traffic east of Salamanca. The rate per ton per mile from Hornellsville to Jersey City, 331 miles, is 1.93 cents, and applying the rate to the service down and back, the rate per ton per mile for the 662 miles is .966 cents, a little over one and a half times the average received on all freight traffic.

C. A milk car on the Erie, with an average load, as testified, of 155 cans of milk, earns daily with the engine hauling it \$49.60, or \$18,104.00 per year, and with such average loading the earnings of the 26 milk cars and engines employed were \$1289.60 daily, equal on that basis to \$470,704.00 per year. The actual receipts of the Erie alone, stated at \$484,093.24, gives average Erie earnings per car for the year of \$18,618.97, and on the basis of the total number of milk cars owned (37 in number), such earnings per car in 1894 were \$13,083.60. The number of freight cars reported in service for the Erie lines east of Salamanca for the year to June 30, 1894, was 28,431. The balance of car mileage due and receivable from other companies was in favor of the Erie to the extent of \$16,200.60, so that not all of this number of cars may have been in service on these lines. The total freight revenue was \$14,963,855.22, and if only half the number of freight cars owned were used on this portion of the system the earnings per car were \$1,052.60.

D. If the return trip of the milk trains is regarded as empty car mileage, such empty car mileage is 50 per cent of the total milk mileage. The proportion of empty freight car mileage to

the total freight car mileage east of Salamanca for the year to June 30, 1894, was 31.70 per cent, and 81.33 per cent of the empty mileage was west-bound.

E. The separate milk trains on the Erie, consisting of 13 milk cars each, average $7\frac{3}{4}$ tons per car on the basis of 155 cans per car. The average number of loaded cars in a freight train on the Erie east of Salamanca in the fiscal year 1894 was 19.29, and the average load per car was 13.44 tons. But these figures do not show the *frequency of movement* with such loading and number of cars to the train. Each of the two milk trains and each of the 26 cars with $7\frac{3}{4}$ tons burden moves every day in the year, while the averages given for the freight business generally are made up from the record of all trains, through and local, fast and slow, regular and special, heavy and light. This, with the amount of rate charged, accounts for the greater yearly earnings per car from milk than from freight traffic generally.

The revenue from passengers carried on the Erie milk trains in 1894 was \$2,868. The amount paid by this company in 1894 for loss and damage accruing through its milk service was \$21.80.

LEHIGH & HUDSON RIVER RAILROAD.

14. As above stated, the total milk and cream traffic annually carried by this road varied but little in amount from 1891 to 1894, inclusive; it increased from 284,465 cans in 1885 to 361,656 cans in 1891, decreased to 359,349 cans in 1892, and the amount in 1894 was 362,677 cans. All milk and cream on this road destined for the New York market goes *via* Greycourt, N. Y., and the Erie. The Lehigh & Hudson River milk receipts in 1894 amounted to \$45,773.68. The train which collects milk at the different stations, carries it to Greycourt, and returning distributes the empty cans at the several stations, also carries dressed meat, butter, and other commodities, passengers, mail and express. As apportioned by the road, its revenue for this train from these additional items amounted in 1894 to \$10,609.15. The most distant point from which milk was brought in that year was Great Meadows, N. J., about 51 miles from Greycourt. There are three or four stations on the Orange County Railroad branch east of Greycourt. Over half of the 1894 milk revenue of this road was derived from traffic shipped from points in

New York State, the most distant of which, New Milford, is 13 miles from Greycourt. No attempt to approximate the cost of doing the milk business other than by train mileage average has been made. The president of the company testified to the effect that milk is among the most profitable articles carried by his road. The average revenue per ton received by this company on all freight for the year ending June 30, 1894, was 43.042 cents, and the average received per ton for all milk, computed from total cans carried, is about five times the amount received per ton on all freight.

In the year to June 30, 1894, the proportion of empty freight car mileage to total loaded and empty freight car mileage was over 39.27 per cent, and over 95 per cent of this empty car mileage was west-bound. The average number of loaded cars in a train was 12, and the average load per car was 15 tons. This road, like the Erie branches in Orange County, was built from Greycourt with main reference to the milk business. It extended first to Warwick, N. Y., and was known as the Warwick Valley R. R. In 1879 the road ran to McAfee, N. J., and in 1882 to Belvidere, the present western terminus. Milk is still one of its principal articles of traffic, yielding in the year to June 30, 1894, over 10 per cent of the total freight revenue, though milk and cream constituted but 2.18 per cent of the tonnage. About \$14 was paid for spilled milk or other loss through milk transportation by this company in 1894.

SUSQUEHANNA LINE.

15. For the year 1894 the total milk revenue of this road was \$208,403.19, of which about \$81,314.51 arose from traffic shipped at stations in New York State. These stations are all on the short branch to Middletown, N. Y., which is 88 miles from Jersey City by this line. About 65 per cent of the milk shipped from New York points and carried by this line through New Jersey is delivered in New York City. The other 35 per cent is delivered at Jersey City. Some other traffic, small in amount, is carried by the milk trains, but what kind or the revenue derived therefrom is not shown; 2,160 passengers, paying \$420.60, were carried on milk trains during the year ending June 30, 1895. No statement of the cost of operating the

milk train is given, except an estimate based on stated percentages of operating expenses as applicable to all freight transportation and to milk alone, and the addition of one third thereto for extra expense in running this milk train. The road had no extra expense for ferry boat service to accommodate receivers of milk. The company paid for loss and damage claims to shippers and consignees of milk and cream in 1894 about \$2,921.58. All the milk cars are iced when necessary at Two Bridges, N. J., and the company paid \$600 for milk car icing in 1894. The milk car costs from \$1,200 to \$1,700 and the ordinary box car about \$450 or \$500. About \$150 per car was expended for milk car repairs in 1894. The company built no creameries in New York in that year, but did erect two in New Jersey; 43.10 per cent of the total car mileage was empty, and 95 per cent of the empty mileage was west-bound. The average number of loaded cars in a freight train was 30, and the average load per car was 18 tons. The average receipts per ton from freight generally in that year were 77.241 cents. The milk and cream carried, a large portion of which was bottled, is computed at a little less than 45,000 tons, and with such tonnage the average milk revenue per ton for the year 1894 was \$4.63, or about six times the revenue per ton on all freight. The milk rate to Jersey City also applies on shipments to intermediate stations.

ONTARIO & WESTERN.

16. This company carried to Weekawken in 1894, as reported by it for this case, 1,164,848½ cans of 40 quarts of milk, cream and pot cheese. The latter item amounted to 2,918 cans, on which its revenue was \$933.76. There were 1,110,037 cans of milk and 51,893½ cans of cream. This includes 145,590 cases of bottled milk, equivalent to 45,664½ cans, or 3.92 per cent of the whole amount carried. The total revenue for carrying was \$381,186.55. The gross revenue on the traffic shipped from Ontario & Western stations was \$365,489.58. The remainder was for shipments received from the Philadelphia & Reading and New England at Campbell Hall, amounting to \$12,382.40; and from the Port Jervis, Monticello & New York road at Summitville, amounting to \$3,314.79. The 32-cent milk rate is divided as follows: Ontario & Western 15 cents; Philadelphia, Reading

& New England 17 cents; Ontario & Western 18½ cents; Port Jervis, Monticello & New York 13½ cents.

The Ontario & Western milk traffic south of, and including Bloomingburgh, 88 miles from Weehawken, and that received from the Philadelphia, Reading & New England connection at Campbell Hall, consisted in 1894 of 175,119½ cans, and the revenue from this was \$56,562.35. The cans received south of Middletown, 78 miles from Weehawken, are stated in evidence to be about 200 cans a day. Cornwall, the station nearest to Weehawken, is 52 miles from that terminal, and the distance between Cornwall and Middletown is 26 miles. The company's detailed statement of the milk traffic and revenue shows that such revenue from stations south of Middletown and covered by this 26 miles was about \$42,128.90, and that the number of cans received at said stations was 130,659½, equal to about 358 cans per day. Exclusive of milk received from the Philadelphia, Reading & New England connection, the number of cans shipped from such stations was about 253 per day.

The total milk receipts from main line stations, Cornwall to Kenwood, the distance between being 212 miles, were \$253,841.62, leaving \$127,344.93, or about 33½ per cent for the business from branches and connections. All of the branch line milk is long distance traffic:

Scranton branch, Como, 173 miles, to Belmont, 178 miles.....	\$ 9,390.89
Delhi branch, Colchester, 183 miles, to Delhi, 196 miles.....	38,039.08
New Berlin branch, Pine Grove, 207 miles, to Edmeston, 232 miles	56,968.95
Utica division, Hamilton, 246 miles, to Deanville, 267 miles	6,315.28
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Total from branch lines	\$110,714.20

This added to the main line business north of Bloomingburgh, and the traffic received from the Port Jervis, Monticello & New York connection at Summitville, 93 miles from Weehawken, gives a total revenue on milk business from points north of Bloomingburgh—exceeding 88 miles and up to 234 miles distant—of \$323,690.44, nearly 85 per cent of the total milk revenue.

The Ontario & Western has two milk trains, composed of 12 or 13 cars each, until Cornwall is reached, at which points the trains are consolidated. The milk is delivered at Weehawken at about 11 P. M. One train starts from Oneida, 267 miles from

Weehawken, and picks up milk on the main line stations, including that from the Utica division at Randallville, down as far as Walton. The other train starts from New Berlin or Edmeston on the New Berlin branch. Traffic from the other branches is brought to the main line by local mixed trains. North of Middletown the grades are heavy, ranging from 65 to 80 feet to the mile, and for the heaviest a second engine is required. Prior to March 1, 1894, no separate account was kept of the earnings from commodities other than milk, cream and pot cheese carried on milk trains. For the succeeding ten months such earnings were \$3,368.13, and for the year to March 1, 1895, they were \$4,060.30. The amount of these earnings for the calendar year 1894 was not far from \$4,000. The passenger receipts are estimated at about \$6,363. These items added to \$373,236.11, the Ontario & Western milk earnings exclusive of payments to connections, amount to \$383,599.11, but this includes some mixed train milk service on branch lines. The company reports the total Ontario & Western earnings of the milk trains proper at \$377,194.00, covering passenger, express and all freight carried on such trains. The cost of these trains is estimated by dividing the number of all train miles run into total operating expenses for the year ending June 30, 1894, multiplying the total milk train miles run by the average expense per mile for all trains, and adding thereto .0829 cents per milk train mile, equal to \$25,532.62, as extra expense of milk train crews, ice, milk collectors' force, heating cars and milk agents' salary. This estimate amounts to \$313,844.87, or 83.20 per cent of the stated milk train earnings, and leaves a net income from operation of \$63,349.13. The total operating expenses used by the company included taxes, but in the reports of railroads to this Commission that item is placed under the head of fixed charges. The gross earnings of this company from operation in the fiscal year 1894 were \$3,842,119.63. The total operating expenses, including general expenses, maintenance of way, structures and equipment and conducting transportation were \$2,624,426.09. The percentage of the stated milk train earnings, \$377,194.00, to such gross earnings was about 9.81 per cent; such percentage of total operating expenses leaves, on this basis, a net operating income from its milk trains of \$119,737.80. The extra expense item of \$25,532.62 above mentioned includes \$7,152.59

for ice and heating of milk cars, the milk being iced from all stations. Icing points are Oneida, Utica, Hamilton, Norwich, Edmeston, New Berlin, Living Waters, Delhi, Belmont (long-distance points), and Fallsburgh and Middletown. The amount used in each car is about 3,000 lbs. Another expense included in the stated extra cost is that for "milk collectors' force," the meaning of which is not explained in testimony. This is given at .0278 per milk train mile, equal to \$8,562.20.

The company has built 16 creameries at a cost of \$32,498.46, and 16 ice houses costing \$10,187. There are about 75 creameries on the line. The loss and damage account in 1894 on milk amounted to only \$6.58, but \$177.96 was paid to a can collector for his services in looking up missing cans. The company reported 39 milk cars in service in the year to June 30, 1894, and the testimony is that the number in 1895 was 44. Besides those used daily in milk trains, a number are kept ready at convenient points for extra demand, but during the season of lighter traffic 10 or 12 of the cars and one engine assigned to the service are laid up. The company's cost for milk car repairs in 1894 was \$9,513.48, or \$250.34 for each of 38 cars. The car and engines are similar in kind and size to those used on the Erie. The receipts per car in 1894 were somewhat less than the milk car receipts of the Erie, but the daily average for each car in use was far in excess of the average daily earnings of the ordinary freight car in the company's service. The company has 6,047 freight cars. For the fiscal year 1894 the balance of car mileage was against it to the amount of \$51,756.39. The total freight revenue was \$2,997,011.22, and if only half the number of cars owned were used in freight service on the road, the annual earnings per car were not quite \$1,000, while the Ontario & Western milk train earnings in 1894 divided by a total of 44 milk cars owned gave a revenue per car for the year of \$8,572.59, and with 13 cars for each of the 2 milk trains, the earnings per car for 1894 were \$14,507.46. The average freight revenue per ton per mile was a little over 9 mills (9.12), while the milk rate per ton per mile from Kenwood, the longest distance point, is over 2.42 cents. Doubling the distance for return can service it would still be 1.21 cents. The average rate per ton per mile actually received from milk business based on the tonnage and actual distance hauled was

much greater. The empty freight car mileage on the Ontario & Western during the year ending June 30, 1894, was 44 per cent of the total freight car mileage, and about 45.45 per cent of the empty mileage was west-bound. The average number of cars in a train was 10.09, and the average load per car was 17.67 tons. As above stated, the two milk trains average 12 or 13 cars each, and these trains are consolidated at Cornwall, 52 miles from Weehawken. The milk tonnage in 1894 was about 60,000 tons, and this divided into the Ontario & Western receipts gives \$6.22 revenue per ton. This is about five times \$1.24649, the average revenue per ton received on all freight in the year ending June 30, 1894. Less than 4 per cent of the traffic was shipped by the heavier bottle or case method. The company furnishes free transportation to dairymen. In 1895 the Ontario & Western milk traffic was only about 264,000 cans less than was carried by the Erie, but the cost of doing the business on the Ontario & Western is greater than on the Erie, mainly because of the much greater distance traveled by the Ontario & Western daily milk train, the great bulk of this company's milk being shipped from long distance points, while that of the Erie comes from the near-by region and its more distant milk is brought to Port Jervis by mixed service. The Ontario & Western daily milk trains run over distances three times greater than milk train distances on the Erie, and the same rate is charged on both roads.

LACKAWANNA LINE.

17. The milk and cream brought by this line is mostly delivered at Hoboken. A comparatively small amount consigned to Newark, N. J., is first transported to Hoboken. Three regular milk trains run daily from Binghamton, N. Y., and another starts from Scranton, Pa. Binghamton is 206 miles and Scranton 144 miles from Hoboken. These trains average about eight cars to the train. The loading for the three trains on leaving Binghamton is milk brought to that point from the Utica & Syracuse divisions and by milk cars attached to passenger trains. The Delaware & Hudson milk is brought by that road to Binghamton. Four or five trains carry milk to Binghamton, and the milk cars are there drilled into the three trains mentioned. These milk trains run at a speed of about 35 miles per hour, including stops. The line runs

through a mountainous region east of Scranton to Delaware Water Gap, and an extra engine is used to surmount the heavy grade on that portion of the line. The delivery service at Hoboken is similar to that performed by the Erie.

In 1894 the total milk traffic of the Lackawanna was about the same in amount as that on the Erie, yet all the Erie milk and cream business was hauled to Jersey City in two milk trains, while four daily trains were employed in taking the Lackawanna milk and cream to Hoboken.

The total amount of milk and cream carried by the Lackawanna in 1894, expressed in cans, is put at 1,649,733 cans by the "Milk Reporter" (6th finding). Analysis of the statement filed for the company setting forth this traffic by stations and months for that year shows the following:

1,238,180 cans of milk at 32¢.....	\$396,217.60
280,418 cans of milk (9,216,709 bottles shipped in cases) at 32¢....	73,733.67
80,862 cans of cream at 50¢.....	15,431.00
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1,499,460 cans.	Total, \$485,382.27

To this is to be added a small quantity of bottled cream and earnings from miscellaneous cans and cases of various sizes amounting in all to about \$1,691.67, making a total milk revenue \$487,073.94. The butter and cheese revenue from carriage in milk trains amounted to about \$3,299.59, thus increasing the total milk train revenue to \$490,373.53. This is only \$742.16 greater than the total milk earnings given in evidence and stated in briefs of counsel to be \$489,631.37. Passengers are carried on some of the milk trains, but the revenue for this service is not given. The difference between the total milk revenue of the Erie and that of the Lackawanna for 1894, about \$34,000, is accounted for to some extent by apparently somewhat less volume of traffic, and slightly lower rates on a small amount of milk to Newark from New Jersey points, but principally by the much greater quantity of cream carried by the Erie in that year.

18. From the Lackawanna statement filed it appears that in 1894 about 7 per cent of the total Lackawanna milk revenue arose from shipments at points in New Jersey and 80 miles or less from Hoboken. All the remainder came from shipments at places 136 miles up to 310 miles from Hoboken, and a little at

Leicester, N. Y., 354 miles. About 10 per cent of the total revenue was from shipments in Pennsylvania, and, approximately, 83 per cent was collected on traffic originating beyond Binghamton, N. Y., 206 miles from Hoboken. A little less than 2 per cent came from the Elmira, Cortland & Northern connection, and about 13½ per cent from the Delaware & Hudson, including the Cooperstown & Charlotte Valley traffic, which is first delivered to the Delaware & Hudson. The remainder arose from shipments mostly upon the Syracuse & Utica Division, including the Richfield Springs Branch. The rates are divided with connections as follows: Elmira, Cortland & Northern, 10 cents a can, whether milk or cream; Delaware & Hudson, 42 per cent. A can of milk from the Elmira, Cortland & Northern is carried by the Lackawanna for 22 cents from Cortland, N. Y., 259 miles, and if the can comes from the Delaware & Hudson at Binghamton, the Lackawanna receives 18.56 cents for carriage from Binghamton.

19. Under a contract now in force between the Lackawanna Company and Robert E. Westcott, of New York City, Westcott has charge of the milk and cream business on the Lackawanna line, and by the terms of the agreement he receives 20 per cent of the gross receipts. This contract, bearing date July 9, 1886, provides that it shall continue in force ten years, subject to revision after three years, and at the end of any one year thereafter, on three months' notice. Mr. Westcott sent the following request to the company on November 25, 1887: "I have established 12 creameries up to this date on different points of the road, and propose still further materially increasing the number, but before doing so must ask whether section 12 of my contract with your company may be modified, striking out the option of revision after 3 years and substituting '3 years from this date' instead, as the construction of buildings, likely to be 35 to 50 additional and 3 large ice houses, will not admit of my being subject to the revision as now contained in the contract." It was thereupon agreed in writing by the parties on November 28, 1887, that the revision clause should not take effect until 3 years from *this date* instead of the 3 years in section 12 of the contract, "it being understood the number is increased to at least 20." On September 30, 1892, about 5 years later, the parties agreed in writing that the

duration of the contract should be extended until July 9, 1901. On April 1, 1872, Robert F. Westcott, father of Robert E., entered into a contract with the Lackawanna to "increase, facilitate, build up and develop the transportation of milk over the Morris & Essex Railroad" (a division of the Lackawanna in New Jersey). It was provided in that contract that the milk rates charged shall be from time to time "fixed by said Robert F. Westcott subject to the approval of the president of the railroad company," but not to exceed 55 cents per can of 40 quarts, and Westcott's compensation under that contract was also 20 per cent of the transportation charge. This contract ran 5 years, was extended for 5 years longer, and then extended to April 25, 1884, "so as to expire with a similar contract of Sussex Railroad," another portion of the Lackawanna system in New Jersey. In March, 1884, two new contracts were made by the elder Westcott, one with the Sussex Railroad Company and another with the Lackawanna, each to run 5 years from February 1, 1884. Under this contract with the Lackawanna, Westcott was to develop and handle milk traffic on the Morris & Essex and on the Lackawanna from Stroudsburg, Pa., fix the rates subject to approval by the president, and receive 20 per cent of the charges. Afterwards, in July, 1886, the present contract with the younger Westcott was made whereby he agrees "to use his best efforts and efficiently do and cause to be done all within his ability to build up, develop, increase, facilitate and conduct the business of transportation of milk over all the lines of the party of the second part, whether owned, controlled or leased by it," and to "charge for the transportation of such milk rates not in excess of those charged by competitive railroads for similar service." Westcott under this agreement is responsible for loss and damage claims connected with the milk business, excepting such loss and claims as may arise through accidents or casualties to the train or negligence of the company or its employees. He collects the freight charges and pays 80 per cent thereof to the company, retaining the remainder as full compensation for all his services, and renders a monthly account. He also undertakes to save the company harmless from all liability for loss of life or injury to "any of the persons doing business over the lines of the party of the second part (company) for or on account of the

party of the first part" (Westcott). The railroad company undertakes that it will not do or permit to be done by its agents or servants any act which will prevent or interfere with Westcott in developing, building up and conducting said business, and grants him "the exclusive privilege of transporting milk over its said lines" so far as it is permitted so to do by law. It agrees to receive, load and transport from all its said stations all the milk furnished at said stations upon a train or trains leaving the same severally at such time or times as may be best calculated to promote the business; to run an extra train upon application to, and at the option of its president and general manager; to receive milk at stations not served by milk trains and transport the same on passenger trains, have its agents at such stations collect the charges, waybill the milk, and ship it in the baggage car of such trains, the baggage master to take the same on the car and put it off therefrom; to furnish depot accommodations at stations where milk trains run for the convenient conduct of the business; to render such assistance to the "messengers" of Westcott upon the milk trains by its train hands as may be necessary for the prompt loading and unloading of milk from the trains; to promptly retransport and return empty milk cars to the several stations; to accept 80 per cent of the charges as full compensation for all claims against Westcott for service rendered by it, including the free transportation of Westcott's agents and messengers engaged in the milk business. Arbitration is provided for in case of differences arising between the parties as to matters connected with the contract or the business therein referred to.

The contract only refers to milk, but it appears that Westcott also handles cream, butter and cheese. He also gets 20 per cent from the revenue of the Lackawanna connections. His compensation for 1894 out of \$489,631.37, the total earnings, amounted to \$97,926.27. His expenses during that year were about \$78,000, but what portion of this was spent in the erection of creameries and otherwise "developing" the business and what expenses incident to handling, transportation and delivery of milk were actually incurred by him are not definitely shown. Westcott has built about 100 creameries on the line. This creamery cost in 1894 is stated at about \$35,000, but the creameries are mostly sold to dealers and other outside parties, and they yield some re-

turn. The remaining \$43,000 of expenses includes some loss on ice furnished to shippers, traveling expenses of milkmen whom he induced to go out into Lackawanna territory, and other items which do not pertain directly to transportation. His salary account for superintendents, messengers on trains and employees at the terminal was about \$30,000. The item of damages paid for spilled milk, lost through delays or accidents and similar causes, is trifling in any year. Westcott obtains and furnishes free passes to milkmen entitling them to transportation over the Lackawanna and connections to points in the milk territory. The passes are countersigned by him and not good otherwise. The Lackawanna receives and transports the milk, pays all train expenses, cleans the cars, and its agents do the billing, waybills being sent to Westcott. Westcott ices the milk cars when the season requires. His duties in reference to transportation appear to be refrigerating the cars, furnishing one or more messengers on each train, doing all the terminal milk business, including handling and delivery, looking after empty cans and securing their prompt return, collecting the freight, keeping an account thereof, paying over 80 per cent to the company, and paying loss and damage claims not chargeable to the company under the contract. Under the figures above given, the cost to Westcott was apparently little if anything in excess of \$40,000 in 1894, leaving about \$58,000 for "developing" the business and his profit.

Westcott operates individually under the title of "Produce Despatch," but that is a name merely. It is not an express company, nor is the business done by Westcott analogous to that of such a company. All of the duties performed by him in connection with this special fast freight business are done by the other defendant lines (except the Lehigh Valley) for themselves. He neither gathers the milk at the farms nor delivers it to dealers' places of business in New York. The railroad company, on account of the volume of the traffic, furnishes trains for a business which when small in amount is usually done by other carriers in baggage or other cars in passenger trains. Concerning the transportation and delivery at the railroad terminal, he is an agent of the railroad company, and for this and for developing the Lackawanna milk traffic he receives the compensation stated. Westcott is authorized by the company in the present milk contract to fix the rate

from all stations under the sole limitation that such rates shall not be greater than those charged by competitive railroads for similar service." It was Westcott who at a meeting of agents in relation to the milk rate insisted upon the reduction from 35 to 32 cents, and his action was finally assented to by the other lines, but notwithstanding his contract authority Westcott did not make this reduction on the Lackawanna until it had received the approval of the president of that company.

20. After deducting Mr. Westcott's 20 per cent, there remained of total earnings in 1894 on milk carried on the Lackawanna line about \$391,705.10. On the basis of train mileage the assistant auditor of the company testified that the share of total operating expenses, including taxes, chargeable against the milk business, for the calendar year 1894 was 3.13 per cent, amounting to \$478,754.28. This is within \$10,877.09 of the sum given as total milk earnings. Counsel for the company in their brief also use the train-mileage basis and compute cost of transportation and maintenance at \$327,147.54, leaving out of this item Westcott's 20 per cent, and such operating expenses as the milk traffic share of general expenses and of station expenses outside of Hoboken. The difference between such cost and the Lackawanna milk earnings is \$102,483.83, and deducting therefrom the amount paid to Mr. Westcott leaves a balance of \$64,557.56 for the omitted expenses and the company's profit from operation.

The average Lackawanna receipts per ton from freight in the year ending June 30, 1894, were \$1.3031. It is testified that the average load for each milk car to Hoboken was 8 tons, and that 8 was the average number of milk cars to the train, making a train load of 64 tons and 256 tons for the 4 daily trains to Hoboken, or 93,440 tons for the year. Dividing such estimate of total tonnage into gross receipts results in a milk revenue per ton of about \$5.24, four times the average receipts per ton for all freight. For the fiscal year to June 30, 1894, the average number of tons in each loaded freight car on the Lackawanna was 16; the average number of tons to the train was 575; the average number of freight cars in a train was 36; the average number of loaded cars in a train was 23, and the average for empties was 22. About 43 per cent of the total car mileage was empty.

LEHIGH VALLEY LINE.

21. From a detailed statement prepared by officers of the company for this case, it appears that in 1894 the Lehigh Valley carried to Jersey City from points west of the New Jersey State line,—namely, stations in Pennsylvania and New York,—about 75,717 cans of milk, 1,639 cans of cream and 311,752 bottles of milk, equal to about 7,794 cans, amounting in all to 85,150 cans, on which the total freight revenue was \$27,574.49. The amount of milk traffic from stations in New Jersey to Jersey City is not given. The number of cans shipped from points outside of New Jersey is about 69 per cent of the amount published in the "Milk Reporter" (6th finding) as the total cans carried for the New York market by this company in that year. Of the freight revenue above mentioned, \$21,282.35 was earned on shipments from main line points in Pennsylvania, 195 miles or more from Jersey City (except about \$347 from one station 94 miles out), and about \$591.86 arose from shipments on the Montrose Railway in Pennsylvania, which connects with the main line at Tunkhannock, 206 miles from Jersey City. The remainder, \$5,700.28, was paid on shipments from points in New York State. As shown in the 6th finding, the number of cans carried by this line in 1895 was greater than in the year preceding by nearly 49,000. This company's aggregate milk revenue in 1894 on shipments to all destinations and from all points on its line was \$134,248.74. This is understood to include milk carried to Philadelphia and between local stations. The other freight traffic carried in milk trains consisted chiefly of butter and eggs, which were charged 35 cents in 1894 as against the regular rate of 30 cents for ordinary service. The butter and cheese rate on milk trains is now 38 cents. About 17,024 pounds of butter and eggs were carried to Jersey City in 1894, yielding a revenue at the 35 cent rate of about \$5,958.40. The passenger business on the milk train is not stated.

22. In 1890 the Lehigh Valley entered into a contract or agreement with Andrew P. Bedford and Arthur J. Stone, doing business as the Farmers' Dairy Despatch, for the development or building up by them of the milk traffic over its line. This was superseded by another contract in 1892 entered into by the fol-

lowing parties: The Farmers' Dairy Despatch, which had become a corporation and had succeeded to the rights of Bedford & Stone under the first agreement; the Easton & Amboy Railroad Company, part of the Lehigh Valley system; the Lehigh Valley Railroad Company; and the Philadelphia & Reading Railroad Company, at that time lessee of the Lehigh Valley. By its terms this contract is to run until May 1, 1906. Daily milk trains are provided for between the various shipping stations and Jersey City and Philadelphia. The compensation of the Despatch is fixed at 20 per cent of the rate of 45 cents per can of milk charged to Philadelphia, and 25 per cent of the rate charged on shipments of milk and cream to points in New Jersey, making, as figured in the contract, 9 cents per can of milk to Philadelphia and 8 cents out of the 32-cent rate to Jersey City. After May 1, 1897, the percentage of the Despatch Company is to be 20 per cent of the freight charge to Jersey City as well as to Philadelphia. A percentage similar to that allowed on Jersey City shipments is provided for on milk between local stations, subject to revision by the parties or in case of disagreement by arbitration. The shipment of butter, cheese, eggs and other dairy products besides milk and cream is permitted in refrigerator cars, the Despatch Company paying the regular published rates therefor. All shipments of milk and cream are to be carried in refrigerator cars furnished by the railroad company and specially fitted for the purpose. The Despatch Company acts merely as a contractor to solicit and to procure the transportation of milk, and is not to own or purchase any part of the milk carried, or pay transportation charges thereon, or have any interest in the traffic whatever. The Despatch agreed to erect milk depots, creameries and ice houses at its own expense, furnish ice needed for the cars, and provide the milk cans and fixtures necessary to carry on the business; but the railroad company contracts to furnish ground for the erection of milk depots, creameries and ice houses at a nominal rent, as well as suitable and convenient terminal facilities. It is also provided in the contract that the Despatch shall be entitled to have from each of the railroad companies a reasonable supply of trip passes for milk dealers to visit the creameries located on the line, but "that such passes shall only be good for use between

points within the same State." The lease to the Philadelphia & Reading has been terminated, and the line is now again operated by the Lehigh Valley Company. Up to the time of hearing about 40 creameries had been erected by the Despatch. The secretary of the Despatch testified that under the arrangement the Despatch takes and develops the milk business of the Lehigh Valley, builds all the creameries and ice houses, fills the ice houses, cleans all the cars, and is at all the expense except the proper railroad business; that the cars are of the refrigerator class, and are owned by "the Dairy Car Company," some of the officers of which are officers of the Despatch, and the cars are leased to the Lehigh Valley. These cars cost about \$2,600 each. The road runs the train, furnishes the crew, loads and unloads the milk. The milk rates are not to be higher than those on other railroads engaged in the traffic. Up to the hearing the milk rate to Philadelphia was still 45 cents a can, the Jersey City rate from the same points being 32 cents.

The total mileage of all milk trains on the Lehigh Valley in 1894, carrying to all destinations, was 324,696, and the earnings per train mile were about 41.3 cents. This includes the higher earnings to Philadelphia. The earnings per train mile on general business were about \$1.30 for the year ending June 30, 1895. The Lehigh Valley did not begin to extend its milk business until 1890, and its general freight agent testified that it had "proved a big loss up to 1894." The increase in the milk carried by this line to Jersey City in 1895, over that so carried in 1893, did not exceed, as appears by the 6th finding, 100,000 cans. Another witness in the company's employ testified that the cost of moving a milk train is not less than 35 cents per train mile. The cost of moving the milk traffic on the Lehigh Valley in 1894 was estimated by the same witness at \$107,823. 00. Deducting 20 per cent of the 1894 milk revenue for the Dairy Despatch (it gets 25 per cent on business to Jersey City) leaves the carrier \$107,398.99 for its expense, not merely of moving the train, but also for maintenance of way, structures and equipment and general expenses. To this should be added the miscellaneous milk train revenue derived from transporting eggs, butter, cheese, vegetables and passengers. The company's average receipts per ton on all freight in that year were \$1.0522. The average receipts per ton from the milk car-

ried from Pennsylvania and New York stations to Jersey City were about six times the average ton revenue for all freight, but compared to that of the other defendant roads delivering milk at New Jersey terminals the Lehigh Valley milk tonnage to Jersey City was very small, amounting, on the basis of 85,150 cans, to only about 4,258 tons.

WEST SHORE LINE.

23. Of the milk traffic carried by the West Shore to Weehawken practically all is delivered to it at Kingston, N. Y., by the Ulster & Delaware and by the Wallkill Valley, a road operated in close affiliation with the West Shore. A special milk train is run from Kingston, 88 miles, to Weehawken. The West Shore and Ulster & Delaware each furnishes one half the car equipment for their route. The train leaves Kingston about 9 o'clock in the evening and arrives in Weehawken at 11 p. m. The milk service on this line is similar to that of the Erie and Ontario & Western. It is claimed for the West Shore that a ferry boat is run during the night at a daily loss of about \$25, which would be unnecessary if the boat were not needed for the accommodation of New York milkmen. This ferry carries the Ontario & Western as well as the West Shore milk. The ferry service is distinct from the transportation by rail, and a separate charge is made for such service. A carload of butter per day for New York City has at times been received from the Ulster & Delaware and hauled in the milk train from Kingston to Weehawken. It appears that this butter traffic is now handled by another train. The 32-cent rate is divided with the two connections on the basis of 50 per cent to the Ulster & Delaware and 40 per cent to the Wallkill Valley. The West Shore has 18 or 20 milk cars in service, costing each between \$1,700 and \$2,000.

The Ulster & Delaware runs 87 miles from Kingston over the Catskill Mountains and through the counties of Ulster and Delaware, N. Y., to Bloomville, its farthest milk point. The grades are heavy. All the milk is gathered in Delaware County on the other side of the mountain and within 45 miles of Bloomville. The traffic amounts to 1,000 or 1,200 cans a day, and there was in 1895 a demand for about 50 per cent more. Prior to the development of this milk traffic the farmers of Delaware County

were very largely engaged in butter-making. Creameries have been built along the line, and now the farmers' principal source of revenue is milk. The Ulster & Delaware has about 15 milk cars, each costing about \$1,800. About one half of the milk shipped over the road is in bottles.

The Wallkill Valley extends from Kingston, 38 miles, to Campbell Hall. All the milk brought to the West Shore at Kingston by this road is collected at stations within a distance of 13 miles from Campbell Hall. There is no statement in the record of the output from the various milk stations on the Wallkill Valley and Ulster & Delaware, but under the testimony of about 1,000 cans shipped daily over the Ulster & Delaware and the statement in the 6th finding of the total cans carried by the West Shore, about three fourths of the West Shore milk appears to originate on the Ulster & Delaware road.

While nearly all the milk traffic of the West Shore is shown to have been derived from its Wallkill Valley and Ulster & Delaware connections, Kingston, N. Y., being the point of junction with both of these roads, the uniform milk rate has been in force over the West Shore as far as and including Utica, N. Y., 232 miles from Weehawken, N. J., under Special Interstate Tariff No. 544, effective January 17, 1890. Since this case was heard and submitted the West Shore has by Special Tariff 1648, I. C. C. No. 173, in effect November 16, 1896, extended the application of the milk and cream rates of 32 and 50 cents per 40-quart car, respectively, to all stations up to and including Bowmansville, N. Y., a point just east of Buffalo, and about 417 miles from Weehawken. The rates on bottled milk and cream are $\frac{1}{4}$ of a cent and $1\frac{1}{4}$ cents per quart, respectively. By supplements to this tariff in force November 30, and December 5, 1896, shipments of milk and cream in cans of less than 40 quarts are charged $\frac{1}{4}$ of a cent per quart on milk and $1\frac{1}{4}$ cents on cream for the full capacity of the can. Cases of bottled milk are also charged for at the capacity of the case. What amount of milk and cream is carried over this line under the uniform rates as thus extended, or what additional facilities have been provided by the West Shore to induce the shipment of long distance milk, or how, generally, its milk service and milk traffic may have been altered, thereby changing facts hereinabove set forth as to such service

and traffic, does not appear. It is shown, however, by the tariff and supplements mentioned that a shipper at Bowmansville, N. Y., can ship milk and cream over the West Shore to Weehawken, 417 miles, at the same rates that are charged by it from West Park, N. Y., 78 miles, the nearest point from which milk is shown to be actually shipped to Weehawken, and at the rates that are in force under such tariff from Tappan, N. Y., 19 miles from Weehawken.

NEW HAVEN LINE.

24. This road hauls 6 or 7 cars of milk daily. There is no showing of facts peculiar to the traffic on this road which is not included in prior findings.

25. There is no delay of equipment at the terminals of the respective delivering lines. The traffic is all removed by consignees within a few hours after its arrival, and the cans, usually returned by the wagons which take milk from the platform at the delivering station, are sent back on the next returning train. In the case of ordinary freight, warehouses or sidings are necessary. Lighterage of cars to New York City on freight consigned to that point over lines running through New Jersey is required, and consignees are allowed by the carriers from 24 to 43 hours for removal of freight from warehouses or cars. Lighterage costs the carriers about 3 cents per 100 pounds. It is claimed for the carriers and not disputed that milk could not be delivered in New York City as early, or with any such certainty as to time, as is accomplished under the present method of delivery to consignees' trucks or drays on the New Jersey side and transportation across the river by ferry; and, moreover, that delivery of this kind of traffic in New York instead of on the New Jersey shore would, for various reasons, involve much greater expense than is represented in the cost of lighterage. The facilities provided by the carriers both for transportation and delivery of milk are generally satisfactory to shippers, consignees and dealers. The losses occurring through spilling of milk or accident to trains are generally insignificant.

26. Condensed milk is of two kinds, plain and preserved. The plain has no sugar in it, is similar in value to cream, and, like cream, it is shipped in cans at the rate of 50 cents per 40 quarts.

Condensed milk is "preserved" by the addition of sugar. The preserved milk is put up in small sealed cans holding about a pint, packed in cases, and shipped by ordinary freight. This milk is also sometimes shipped in kegs or barrels. In the manufacture of a case of preserved milk which sells for about \$5, about $1\frac{1}{2}$ cans of raw milk are required. A case worth \$10 weighs about 100 pounds, and a 100-pound or 40-quart can of cream is worth about \$6. There are several condensaries in the nearby region, and some have been established in the more distant districts. These factories have been located on most of the defendant lines. One company, operating 6 or 7 condensaries, ships over the Susquehanna, Ontario & Western, Lackawanna, Wallkill Valley, West Shore and Harlem roads. Its most distant condensing plant is about 240 miles out on the Ontario & Western. This condensing company is also largely engaged in sending raw milk to the New York market. It has established bottling plants at a number of points, and practically all of its shipments of raw milk are in bottles. The condensary takes milk from the farmers under contracts which forbid them from feeding brewers' grains and some other foods deemed objectionable for condensing purposes, and it pays more than the average price received by farmers in the same locality on shipments of milk for the New York market; but the condensing company gets its milk for a less price in the more distant regions than it pays to farmers in nearby localities, about $\frac{1}{4}$ cent less per quart the year through. The secretary of the condensing company above referred to testified that rates per 100 pounds paid by his company on preserved milk to New York City were, in 1895, 10 cents on the Wallkill Valley-West Shore line, 10 cents on the Harlem and 12 cents on the Ontario & Western. The tariffs of the Lackawanna road show rates of 25 and 23 cents (3d class) on less than carloads and 17 and 18 cents (4th class) carloads. On the Erie condensed milk rates are named in tariffs filed only to Jersey City. These are 50 cents per can on plain condensed milk from all points, and for the preserved article they range from 16 cents less than carloads and 11 cents carloads at Port Jervis, N. Y., down to 12 and 8 cents at Turner's, 10 and 7 cents at Suffern, N. Y., and 5 cents for any quantity at Rutherford, N. J., 12 miles from Jersey City.

27. From Chicago, Ill., rates on cattle, feed and hay are higher

on the Erie to Port Jervis and stations east of that point than to the more distant milk shipping stations on that line. As between Hornellsville and Greycourt, the differences in those rates are 5 cents on cattle, $3\frac{1}{2}$ cents on feed and $4\frac{1}{2}$ cents on hay. On the Lackawanna these rates from Chicago are about 1 cent less to South Columbia than to Delaware, N. J., 310 miles and 80 miles, respectively, from Hoboken; and they are from 2 to 3 cents lower from Chicago to Kenwood than to Summitville, N. Y., 264 and 93 miles, respectively, from Weehawken on the Ontario & Western. Some of the Ontario & Western branch lines north of Summitville take higher rates than points on the main line. The difference in these rates on the Lehigh Valley as between the nearer and far-distant milk stations is about the same as it is on the Lackawanna. Cattle, feed and hay rates to points on the Delaware & Hudson (Albany to Binghamton), Lehigh & Hudson River and Wallkill Valley roads are the same from Chicago to all stations.

28. Following are less than carload rates in cents per 100 pounds on potatoes, apples, onions butter, eggs, cheese, dressed meats, green fruit and milk from various points on the defendant lines to their respective New Jersey terminals:

MILK PRODUCERS' PROTECTIVE ASSO. V. DELAWARE, L. & W. R. CO. 151

LINE.	PLACES.	Miles.	Potatoes.	Appls.	Onions.	Butter.	Eggs.	Cheese.	Dressed Meats.	Green Fruit.	Milk.
ERIE.	Hornellsville to	331									
	Binghamton,	214	18	25	18	30	30	25	35	35	32
	Susquehanna,	191	17	24	18	29	29	24	34	34	32
	Port Jervis,	87	11	16	11	20	20	16			32
	Greycourt,	53	9	13	9	15	15	13	18	18	32
Lehigh & Hudson River.	Belvidere,	116	16	18	16	23	23	18	28	28	32
	Andover,	102									
	to										
	Warwick,	73	10	15	10	17	17	15	20	20	32
ONTARIO & WESTERN.	Maybrook,	63	9	13	9	15	15	13	18	18	32
	Oneida to	267									
	Sidney,	200	18	25	18	30	30	25	35	35	32
	Summitville,	93	11	16	11	20	20	16	23	23	32
	Middletown,	78	10	15	10	17	17	15	20	20	32
LACKAWANNA.	Campbell Hall,	68	9	13	9	15	15	13	18	18	32
	West Cornwall,	55	9	11	9	13	13	11	15	15	32
	South Columbia to	310									
	Binghamton,	206	18	25	18	30	30	25	35	35	32
	Wayland to	325									
Delaware & Hudson.	Owego,	227	18	25	18	30	30	25	35	35	32
	Alford to	179									
	Scranton,	144	17	23	17	30	30	23	35	35	32
	Delaware,	79	14	19	14	23	23	19	26	26	32
	Cobleskill to	303									
WEST SHORE (Wallkill Valley).	Sanitaria Springs,	215	18	25	18	30	30	25	35	35	32
	New Paltz to	103									
LEHIGH VALLEY.	Campbell Hall,	126	18	20	18	25	25	20	30	30	32
	Points on Auburn & Cayuga Div. and main line, including										
	Romulus,	335	18	25	18	30	30	25	35	35	32
	Tunkhannock to	206									
	White Haven,	145	17	23	17	30	30	23	35	35	32
	Catasauqua,	96	13	17	13	21	21	17	25	25	
	Phillipsburgh,	75	12	15	12	17	17	15	20	20	

29. Fifteen or twenty years ago the bulk of milk for the New York market was shipped direct by farmers to the dealers. Since then many additional "creameries" have been erected at points on the various defendant lines. Some are controlled by associations of farmers. A considerable number are owned or operated by New York dealers. The amount shipped by the creameries is often regulated by daily advices from New York consignees. The surplus milk at the creamery is made into butter and cheese. The creamery cools the milk, and keeps it in that condition until loaded into the cars. The creamery men buy milk of the farmers, paying from 10 to 20 cents a can under the market price, and any loss resulting from surplus of milk necessarily made into butter and cheese is borne by the creamery. A continuance of decreased demand upon the creamery by its New York consignees must, however, unless it occurs at a time when there is greater profit in the manufacture of butter and cheese than in the shipment of milk, tend to affect the price paid to or the quantity of milk taken from farmers by the creamery.

Some New York dealers who formerly bought milk in Orange County, N. Y., and other portions of the nearby district, have gone out into the more distant fields of production. Among the causes for this action on the part of such New York dealers are (1), the acceptance of a less price per quart by farmers in the far-off region; (2), a constantly growing demand in New York and adjacent cities which could not have been met by Orange County, N. Y., Sussex County, N. J., and localities in counties adjoining, if all the milk they were capable of producing had been supplied; (3), the more or less constant friction and at times serious differences between the nearby farmers and dealers over prices arbitrarily fixed by the Milk Exchange; (4), a practice followed by some nearby producers of feeding brewers' grains to their cows in such condition or quantity as to result in a poorer quality of milk. These circumstances tend, when they exist, to increase the development of the more distant milk region whether the milk is carried from all sources under a uniform rate or not. But the development of the far-off milk region has been carried far beyond this natural demand, and a total supply made possible (largely regulated by changes in orders for shipment) which is much greater than the current requirements of the cities; and this has

been accomplished through extension of the uniform rate for considerable distances from time to time, through the free icing of milk in transportation by most of the carriers, through solicitations by railway agents, and through facilities and other material aid to dealers and others in the erection of creameries in the more distant localities or the occupation of those already built. This extension of the total milk traffic under a uniform rate charged by all the defendant lines has been without regard to greater cost of transportation from the more distant regions or to any difference in cost of service on the several lines from their respective fields of supply. While this extraordinary development of distant milk production has been going on, changes in conditions affecting milk traffic from the nearby producing region have also taken place. An efficient system of milk inspection has been established in New York City. Milk adulteration subjects the offender to rigorous prosecution, and the quality of the milk sold in that city must, on chemical analysis, come up to the prescribed standard of purity. A dairy bureau or commissionership has been established by the State; the keeping of diseased cattle on milk farms has been practically done away with under the operation of State law; and the fixing of prices to producers by a combination of dealers known as the "Milk Exchange" has been judicially prohibited. The milk produced in the nearby section and shipped for the New York market has, for several years, at least, been of good quality and fully up to the prescribed standard of purity. The dealers rely upon the nearby section for a convenient source of fresh milk supply. Notwithstanding these changes, the operation of the uniform rate, together with the efforts of the several roads and their agents to increase the more distant milk business and the acquired interest of some of the New York milkmen in distant creameries, have resulted in a large decrease of Orange County milk shipments over the Erie, the principal carrier from that section, and in comparatively little increase, in the face of the constantly growing demand, on the Lehigh & Hudson River and the Susquehanna. The West Shore traffic has also diminished. The demand as now apportioned is considerably less in the nearby section than its farms, particularly in Orange County, are able to supply. This county could and would, it is testified, have produced more milk than it has if the uniform rate had not

been extended for such considerable distances over the various roads, and the possible additional amount is estimated in testimony at from 30 to 50 per cent. Much of the country quite near to New York City has been converted into a suburban residence section during the past 15 years. Thus, milk on the Long Island road has become a comparatively small item, and many localities served by the New Jersey Central and other roads in New Jersey have been similarly affected. Orange County, N. Y., also contains many suburban residences, and the acreage in that county which could under sufficient demand be devoted to milk production is apparently somewhat less than it would have been several years ago. The value of farming land in this county and in most of the less distant milk producing localities is greater than that of such land in the far-off region, and to that extent, and any difference in the prices of feed which may exist, it costs more to produce milk in the nearby region than in the much more distant districts.

30. On the Erie, class rates to Jersey City, Hornellsville, 331 miles, to Great Bend, 200 miles, inclusive, are on classes 1 to 6,—35, 30, 25, 18, 15 and 13 cents, respectively. The same rates also apply from points on the Jefferson or Carbondale branch, 218 miles from Jersey City. These class rates decrease station by station or by short groups, so that from Port Jervis, 87 miles from Jersey City, they are 23, 20, 16, 11, $9\frac{1}{2}$ and $8\frac{1}{2}$ cents, and from Turner's, 46 miles, they are 17, 14, 12, 8, $6\frac{1}{2}$ and $5\frac{1}{2}$ cents. Somewhat higher rates are charged from branch lines east of Port Jervis. On the Lehigh & Hudson River connection the first class rate from Belvidere, 116 miles from Jersey City, is 28 cents, but Great Meadows, 105 miles, to Stone Bridge, 62 miles, take first class, 20 cents, and Maybrook, on the Orange County branch, has a first-class rate of 18 cents to Jersey City.

All Susquehanna stations in New York 74 to 88 miles from Jersey City take the same class rates (first class 22 cents). From all stations on the Wallkill Valley to Weehawken the class rates are the same, 30 cents first class. On the West Shore class rates are on a basis of 39 cents first class from Bowmansville, 417 miles from Weehawken, 35 cents from Oakfield, 395 miles, 34 cents from Manlius Centre, 270 miles, and are graded downwards from shorter distance stations or groups. The Ontario & Western first-

class rate to Weehawken is 35 cents, Kenwood, 264 miles, to Walton, 179 miles, and also on the Scranton Branch and Utica Division. Class rates on the Delhi and New Berlin branch are somewhat higher. From Walton they decrease in short groups, at Bloomingburgh, 88 miles, the first-class rate is 23 cents, at Middletown, 78 miles, 20 cents, and Campbell Hall, 68 miles, 18 cents.

The Lackawanna class rates from South Columbia, N. Y., 310 miles from Hoboken, are on the basis of 35 cents first class, and so are practically all other milk stations on its main line and branches in New York and on the Delaware & Hudson connection, and also stations on the Lackawanna in Pennsylvania to Factoryville, Pa., 160 miles from Hoboken, with slight variation in the third-class rate. From Delaware, N. J., on or near the State line, and about 80 miles from Hoboken, the first-class rate is 23 cents. The class rates of the Lehigh Valley are similarly arranged, the 35 cent rate applying at its New York milk stations and ending with La Grange, Pa., 195 miles from Jersey City.

Class rates on the New Haven road to New York City are 20 cents first class from Pittsfield, Mass., 163 miles, and 17 cents from Newtown, Conn., 72 miles, its farthest and nearest milk stations.

31. As the transportation service is conducted, milk is a very desirable kind of traffic to the defendant roads. As prior findings show, the Erie is among those on which, from the method of transportation, the cost of service is least, while on the Lackawanna and Lehigh Valley the cost of service is relatively much greater. Economically conducted, milk transportation on all the lines is highly profitable.

32. The return of empty cans is, as before found, part of the transportation service rendered by defendants, for which they charge a total rate of 32 cents on milk. Empty milk cans are $1\frac{1}{2}$ times first class in the "Official Classification" in force over the defendant roads. The empty milk can weighs about 20 pounds, and the weight of an average carload of about 160 cans (on the Lackawanna, Ontario, and substantially so on the Erie) is 3,200 pounds, $1\frac{1}{2}$ tons. The practical limit of the short distance traffic on the Erie, Lackawanna, Ontario & Western and Lehigh Valley is from 80 to 100 miles, to Port Jervis, Delaware, Bloomingburgh or Summitville, and Catasauqua, on their respective lines, and the

first-class rates between New Jersey terminals and these points range from 23 to 25 cents. Empty milk cans in any quantity, carloads or less, may be shipped to those points at $1\frac{1}{2}$ times the first-class rate independently of their having been used to bring milk for the New York market, and the charge per can of 20 pounds for such shipment would be 7 or $7\frac{1}{2}$ cents in 100 pound lots. On this basis, $7\frac{1}{2}$ cents out of the 32-cent rate is applicable to the service rendered in returning empty cans for such short-distance traffic. This excludes the consideration that such cans are returned by the fast milk service, but, on the other hand, it takes no account of the fact that the same or like cars and crews required to carry milk down must, to do the business, be ready at the shipping points for the next day's supply, whether there is any return load or not. In the decision of the *Howell Case*, the Commission found that "taking into account the return of empty cans, the rate per 100 pounds charged upon milk shipments is about 29 $\frac{1}{4}$ cents." The uniform milk rate was then 35 cents, making an allowance of 5 $\frac{1}{4}$ cents for the return of the can. This was determined on the basis of 200 cans to the car, making 10 tons down and 2 tons of empties back. An average load down of 160 cans of milk and back of the like number of empties gives 8 tons down and 1 $\frac{1}{2}$ tons back, and apportioning the rate of 32 cents to such tonnage results in 26 $\frac{3}{4}$ cents for the milk business down and 5 $\frac{1}{4}$ cents for the haul of empties back regardless of the distance carried. Seven and one-half cents for the return of empties, therefore, represents more than the tonnage share due to the empty cans on the basis of the rate fixed by defendants themselves for the entire service from the most distant milk stations, and is substantially equal to defendants' established rate for the independent shipment of milk cans in any quantity for distances of 80 to 100 miles from the terminal.

33. Practically all of the Lehigh Valley and Lackawanna milk goes over long distances except that which is transported wholly in New Jersey. An estimate of the shipments of milk in 1895 from nearby localities in New York, New Jersey and Connecticut transported through different States is arrived at from prior findings on the basis of 80 per cent of the Erie traffic (including all Lehigh & Hudson River shipments), 15 per cent of Ontario & Western shipments, 40 per cent of the Susquehanna business, 25

per cent of the West Shore and 50 per cent of the New Haven shipments. According to these proportions such nearby milk shipments amounted in 1895, on the basis of total cans carried as stated in the 6th finding, to less than 2,000,000 cans, and less than 25 per cent of the total milk, cream and condensed milk carried by the defendant and all lines to the terminals in that year. An increase of 30 per cent of this output carried through different States from the nearby milk region only amounts to an addition of 600,000 cans,—about double the estimated amount of traffic lost from the Erie main line and branches in Orange County between 1892 and 1895. Such loss in Erie traffic, the decrease on the West Shore, and the only slight increases on other nearby roads, may be partially due to the diversion of milk to condensaries in that section, but the testimony is that condensing companies have also been establishing plants in more distant districts. The total of about 8,000,000 cans carried to New York by all lines in 1895 was an increase in 10 years of over 47 per cent of the amount transported in 1886. An average yearly increase of 4 per cent in the New York demand is reasonably certain, and such percentage is likely to be more than 4 per cent on account of the greater additions to the city population in each succeeding year. Such additional yearly demand, the limited capacity of the nearby field and the tendency in a considerable portion of that region toward a decrease of acreage applicable to milk production, the apparently somewhat less cost of production to farmers in the distant districts, the less price which has been accepted by such producers, the milk transportation facilities afforded by all the long distance roads, and the large number of creameries in operation on such roads,—are all conditions which operate directly to increase shipments from the more distant regions, and which together must necessarily prevent any very great or permanent diminution of such shipments resulting from somewhat lower transportation rates for the lesser service from the shorter distance localities.

CONCLUSIONS.

The roads of the Elmira, Cortland & Northern Railroad Co. and the Delaware & Hudson Canal Co. wholly in New York are employed in connection with the Lackawanna, under a "common arrangement" for continuous carriage or shipment, in the transportation of milk and cream from points in New York to Hoboken, N. J., and the provisions of the Act to Regulate Commerce apply to such transportation and the carriers engaged therein. The transportation of milk or cream by any of the defendants to Hoboken, Jersey City or Weehawken, which is performed wholly within the State of New Jersey, is not subject to regulation under that Act.

A further question of jurisdiction is raised by the Susquehanna as to 65 per cent of the milk transported by it from points in the State of New York. It claims that such portion of its milk from New York points, though carried through New Jersey, is delivered by it in New York City, and that transportation so conducted between points in the same State is not subject to the Federal statute. The decision of the United States Supreme Court in *Lehigh Valley R. Co. v. Pennsylvania*, 145 U. S. 194, 36 L. ed. 673, 4 Inters. Com. Rep. 87, is relied upon by counsel for the Susquehanna as authority for a ruling that traffic shipped between points in the same State, but passing through another State in the course of transportation, is not within the provisions of that statute; and in their brief counsel call attention by citation to the fact that this Commission regarded the *Lehigh Valley Case* as such authority in *Chamber of Commerce of Minneapolis v. Chicago, M. & St. P. R. Co.* 5 I. C. C. Rep. 571. We did not have occasion to decide the question in the *Minneapolis Case*, and our reference there to the Supreme Court decision was that it seemed to have the effect of excluding commerce between points in the same State which passes through another State from regulation by the Federal government. The question is now distinctly raised as to the greater part of the milk traffic shipped over the Susquehanna from New York State points, and we have carefully examined and considered the *Lehigh Valley* decision with a view of determining whether it is actually controlling, as claimed by counsel. That case involved the right of the State of Pennsylvania to tax the receipts of the Lehigh Valley Company

from traffic shipped between points in that State, but passing through New Jersey in course of transportation, *so far as such receipts arose from service over the Lehigh Valley mileage within the State of Pennsylvania.* There was no dispute as to the amount of the tax, and the only question raised was whether the State could lay a tax upon the business at all. The Supreme Court upheld the validity of the tax involved. Whatever other or broader application may be given to language used or principles considered by the court in that case, the decision was confined to the question of taxation on what was done or earned within the State. The Lehigh Valley carried the property from a point in Pennsylvania to the New Jersey line and just across it to Phillipsburg, N. J., and from thence the continuous carriage was by arrangement conducted by the Pennsylvania Railroad Company to Philadelphia, Pa. If the State of Pennsylvania had attempted to regulate the aggregate charge or charges made for the entire transportation through different States, we think the court would have had an entirely different case to consider. In this milk case, the Susquehanna, in carrying from Middletown, N. Y., to Jersey City, N. J., is admittedly engaged in interstate transportation, and the carriage from Jersey City, N. J., to New York City, N. Y., across the Hudson River, whether performed by ferry or lighter, is also transportation between different States. Yet its contention is that by combining these two interstate transportations the service becomes intrastate, and the commerce internal to the State of New York. A State and an interstate transportation may be combined and made continuous so as as to *extend* the interstate service over the whole distance; but we are unable to understand how two distinctly interstate carriages can, on being connected and made continuous, be *contracted* into purely state transportation because the beginning and ending points happen to be in the same State, so as to give that State jurisdiction of the whole transportation. The Lackawanna receives freight at New York City, takes it across the river to New Jersey, and through that State and the State of Pennsylvania to Binghamton, N. Y.; and out of the total distance of about 208 miles less than 15 are within the State of New York. Granting that New York may impose a tax on the gross receipts of the Lackawanna, represented by its mileage in New York, on traffic between points in that

State, does it follow that New York can also regulate the freight charges and passenger fares of the Lackawanna for the whole distance between New York City and Binghamton, N. Y.? We think not. If neither of the States through which the transportation is conducted has power to regulate the entire transportation or the compensation exacted therefor, it does follow, we think, that such power is vested in the general government. This Commission held, in 1888, in *New Orleans Cotton Exchange v. Cincinnati, N. O. & T. P. R. Co.* 2 I. C. C. Rep. 375, 2 Inters. Com. Rep. 289, that:

"All commerce is subject to regulation; that wholly within a State and subject to its sovereign power by the State; that among the States and with foreign nations and not wholly within the sovereign power of any one State by the United States, for the reason that to be effectual, regulation must be uniform, at least not conflicting. Commerce between Shreveport and New Orleans, while crossing on the ferry between Delta, La., and Vicksburg, Miss., is not subject to regulation by the State of Louisiana. The business of transferring freight by the ferry between the two States is interstate commerce. *Gloucester Ferry Company v. Pennsylvania*, 114 U. S. 196, 29 L. ed. 158, 1 Inters. Com. Rep. 382.

"While passing through Mississippi, after passing from Louisiana, this commerce is interstate, and subject alone to interstate regulation. It is not subject at any place between Shreveport and New Orleans to regulation by both the State and the Congress. It passes by continuous carriage from Louisiana to, and through, the State of Mississippi. It is not transportation 'wholly within one State.' It is subject to regulation by the provision of the Act to Regulate Commerce, and the Commission has jurisdiction to revise the rates when the parties interested in them are before it."

The Lehigh Valley decision is not necessarily in conflict with this view. The Supreme Court called attention in that decision to the fact that the case was one of taxation, *and not one of direct regulation*, citing *Pacific Coast S. S. Co. v. Board of R. Comrs.* 9 Sawy. 253, as indicating the distinction. In the case so cited, the California Commission sought to regulate commerce between ports of that State when carried by a line of vessels navigating the Pacific Ocean more than a marine league from the shore. Mr. Justice Field, sitting as circuit justice and writing the opinion, said: "To bring the transportation within the control of the State, as part of its domestic commerce, *the subject transported*

must be within the entire voyage under the exclusive jurisdiction of the State." That decision seems to rest entirely upon the commerce clause in the Constitution of the United States. If the steamship or vessel plying between California ports was, while on the ocean, engaged in commerce with foreign nations, as was observed in the *Lehigh Valley* decision in discussing *Lord v. Goodall, N. & P. S. S. Co.* 102 U. S. 541, 26 L. ed. 224, then a railroad company in carrying between points in the same State, by a route which passes through another State, is as clearly engaged in commerce among the States while operating in the second State. The effect in either case is to deny the jurisdiction of the State wherein the shipment commences and terminates to regulate transportation over the entire distance when the route passes beyond its borders.

In *Covington & C. Bridge Co. v. Kentucky*, 154 U. S. 204, 38 L. ed. 962, 4 Inters. Com. Rep. 649, decided since the *Lehigh Valley Case*, the power of a State to tax, and its power to prescribe a scale of charges for the use of, instrumentalities of interstate commerce are carefully distinguished. The Supreme Court held that the action of Kentucky in prescribing tolls to be charged over a bridge between Covington, Ky., and Cincinnati, O., was a regulation of interstate commerce. "It is obvious that the bridge could not have been built without the consent of Ohio, since the north end of the bridge and its abutments rest upon Ohio soil; and without authority from that State to exercise the right of eminent domain, no land could have been acquired for that purpose. It follows that, if the State of Kentucky has the right to regulate the travel upon such bridge and fix the tolls, the State of Ohio has the same right, and so long as their action is harmonious there may be no room for friction between the States; but it would scarcely be consonant with good sense to say that separate regulations and separate tariffs may be adopted by each State (if the subject be one for State regulation), and made applicable to that portion of the bridge within its own territory." After showing how, through a conflict of State interests, different tolls might be established by each State, the Supreme Court held: "Congress, and Congress alone, possesses the requisite power to harmonize such differences, and to enact a uniform scale of charges which will be operative in both directions." A practicable transporta-

tion route exists from Covington, Ky., to Louisville, Ky., over the bridge to Cincinnati, through Ohio and Indiana to Jeffersonville, and across a bridge to Louisville. Kentucky cannot prescribe the tolls over either bridge, nor the transportation charges between Cincinnati, O., and Jeffersonville, Ind., nor can it authorize the construction of such a line or control its operation, and it follows that it could not regulate the aggregate charges over that route between Covington and Louisville. For the same reasons, New York is without power to authorize the construction of a route like the Susquehanna from Middletown, N. Y., through New Jersey to New York City, or to control the operation of such a route, or to regulate charges made thereover between Middletown and New York City.

In *Texas & P. R. Co. v. Interstate Commerce Commission* (*The Import Rate Case*), 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, the Supreme Court was called upon to determine what commerce was subject to the provisions of the Act to Regulate Commerce. The court said: "It would be difficult to use language more unmistakably signifying that Congress had in view the whole field of commerce (*excepting commerce wholly within the State*), as well that between the States and Territories as that going to or coming from foreign countries."

We hold in this case that the Susquehanna Company is as much subject to regulation under the Act to Regulate Commerce in respect of the portion of its milk business from New York points which it carries through New Jersey and claims to deliver in New York City as it is in regard to other interstate transportation in which it is engaged.

A further question as to the right of the complaining association to maintain the proceeding as against several of the defendants was raised chiefly in argument, but based upon denials on information and belief in the answers of such defendants that members of the complainant or those whom it represents are engaged in shipping milk over their lines to their respective terminals. Complainant alleged in its petition that it complained not only on behalf and in the interest of itself and its members, but also on behalf of all other farmers, producers or shippers of cream, milk and buttermilk from all shipping points on the defendant roads to Hoboken, Weehawken, Jersey City and New

York. The complaint is against the same uniform or blanket milk rate and cream rate for all distances on each line as fixed by agreement or consent of all the lines. The complainant, whether representing its own members, or specially authorized to represent other shippers, or assuming in addition to represent shippers engaged in the same industry on some of the lines, was entitled to bring and maintain this proceeding—affecting rates on milk supplied for a common and necessarily limited market—against all the defendants engaged in carrying for that market; and the milk rates charged on all of these lines from the various points of shipment are properly involved in the controversy. Moreover, a defendant is not entitled to have a complaint dismissed as to it “because of the absence of direct damage to the complainant,” and it is the duty of this Commission, under express direction in the Act, to “execute and enforce” the provisions of that statute.

The complaint alleges that defendants' milk rates for longer and shorter distances over the same line, in the same direction, are in violation of the fourth section of the statute. We find nothing in the facts to sustain this allegation, and the point was not pressed in argument. Charging the same aggregate rates for longer and shorter distances does not contravene the provisions of section 4, though such charges may constitute violations of other provisions in the statute. *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 4 I. C. C. Rep. 744, 3 Inters. Com. Rep. 682.

The findings show that on some of the lines passes entitling the holder to free transportation as a passenger are issued to shippers or dealers on account of the interstate milk traffic of the road. The issuance of such passes for interstate transportation is an offense against the law, as affording transportation for an interstate journey at less than established fares or charges; and whether the pass issued entitles the holder to interstate passage or not, if granted on account of the interstate transportation of freight, it results in a “rebate” or “device” whereby the pass holder obtains such freight transportation not only at something less than tariff rates, but for a less net price than is exacted from persons not so favored who are shippers of like traffic transported under similar conditions between the same points. The giving of free or reduced transportation to shippers of or dealers in milk carried by a road to interstate destinations is unlawful.

The Lackawanna and Lehigh Valley are parties to agreements entered into mainly for the purpose of developing their milk traffic, and under which compensation is afforded to the other contracting parties equal to a considerable share of the gross receipts from the transportation. Such compensation, as the business has been increased or "developed" on the Lackawanna, or may become greater on the Lehigh Valley, seems extravagant, but whether either agreement is disadvantageous to the carrier or otherwise is matter for it to determine. "Improvident management of the road is primarily a matter of internal or corporate concern, to be dealt with by the corporation and its creditors among themselves." *Shamberg v. Delaware, L. & W. R. Co.* 4 I. C. C. Rep. 660, 3 Inters. Com. Rep. 502. But extraordinary or unnecessary cost of operation or management cannot be permitted to cause unreasonable or unjust rates, discriminations, preferences or prejudices. *Shamberg v. Delaware, L. & W. R. Co. supra.*

The main subject for decision is whether defendants' uniform rate on milk and uniform rate on cream from all stations to their respective delivering terminals in New Jersey or in New York City are unlawful, and, if so, to what extent.

Counsel on both sides have cited decisions of the Commission in support of their respective views as to the application of the undue preference clause of the law to this case. The Commission held in *Howell v. New York, L. E. & W. R. Co. (The Howell Milk Case)*, 2 I. C. C. Rep. 272, 2 Inters. Com. Rep. 162, and also in *Imperial Coal Co. v. Pittsburg & L. E. R. Co.* 2 I. C. C. Rep. 618, 2 Inters. Com. Rep. 436, cases relied upon by the defense, that proof of tangible injury must be shown to make the preference or prejudice arising from a group rate unreasonable or undue. But it was also said in the prevailing opinion in the *Imperial Coal Case* that "if the effect of disregarding distance is to impose burdens for the benefit of others on those who have the natural advantage of location, it is unjust and cannot be sanctioned;" and in the *Howell Milk Case* it was determined on the facts by a majority of the Commission that "it is not shown that the addition of new territory at any time has operated to the prejudice of the old." This Commission held in the later cases of *Eau Claire*, 5 I. C. C. Rep. 265, *Minneapolis*, 5 I. C. C. Rep. 571, and *James & Abbott*, 5 I. C. C. Rep. 613, that each community is entitled to

the benefits arising from its location and natural conditions. Fixing rates with a view of equalizing commercial conditions was also condemned in the *Eau Claire Case*. In the case of *Newland v. Northern P. R. Co.* 6 I. C. C. Rep. 131, the same grain rate from grouped stations 200 or more miles apart was held to deny to the producer nearer the market the advantages of his location. We said further in that case that "the practice of making one rate on the same product over a very large district, and thus equalizing the burdens of transportation to the same market, is only justifiable under special and exceptional circumstances." The complaint also presents the further question as to the reasonableness and justice of the uniform rate as applied to this traffic from the various shipping points on the several lines.

Unlike most cases in which the legality of group or uniform rating has been questioned, the traffic which is the subject of present consideration constitutes the great bulk of an important daily food supply for New York and adjacent cities which, because of its extra perishability, can be drawn only from sources accessible by daily rail communication from the market of consumption and sale; and, on the other hand, the sale or demand in such market is necessarily limited to the quantity required for daily consumption. While the available milk supply should at all times be sufficient to meet the needs of consumers in such a market, a surplus of this commodity cannot, because of its perishability, be kept over or reshipped for sale in other cities. Under such circumstances, the shipments are practically limited to the amount of daily consumption, and this fact emphasizes the duty of the carriers to establish rates which will not deprive producers more favorably situated with reference to and dependent upon that market of part of their trade in a limited traffic, or prevent them from supplying their share of the greater demand due to increase in the city population or in consumption per capita. Furnishing an extra perishable article like milk in no greater quantities than is required for daily use in a given city is a business which falls naturally to those producers nearest to the city who are able to provide the needed supply. As was said by the Commission in the *Howell Case*: "Prudence would influence railroad managers to confine the collection of milk within the territory in which it can be most cheaply handled, and to extend the milk system no further than the increasing growth of the demand should require."

This milk which is carried under a single rate charged by agreement or concurrent action of all the lines for all shipping distances on each line, must be regarded as one mass of traffic destined for consumption only in New York and adjacent cities. It has been largely varied in amount for each line, and the producing localities served by it, according as greater inducements have been afforded in the way of creamery leases or sales, cheap ice, labor, and other local advantages, refrigeration in transportation, quick service, convenient delivery and like facilities, and by the lower price at which milk of good quality may be sold in localities reached by the line. There has been uniformity in charge and absence of uniformity as to service and traffic inducements on the lines west of the Hudson River. Natural disadvantages of more distant producers have been thereby overcome, and producers nearer the market have been denied recognition of their more favorable location. Under the present system, the amount of the uniform transportation charge is made the subject of agreement between the principal carriers west of the Hudson River, and the cost to dealers in the city market of milk brought over both long and short distances is thereby practically or nearly equalized. This situation facilitates agreements among the dealers as to the price paid to producers, and it does not operate to prevent them from fixing a standard scale of charges to the different classes of consumers. Benefits which may accrue to New York City consumers under the uniform milk rate, would apparently be enhanced rather than diminished under transportation rates properly graded or grouped, and no higher than reasonable from the more distant sources of supply.

The findings demonstrate what was found not to be the fact in the *Howell Case*, "that the addition of new territory," in connection with methods adopted for developing the business, "has operated to the prejudice of the old." The nearby section, comprised within a radius of 100 miles of New York by direct lines, has participated but little in the more than 47 per cent increase in the New York supply during the ten years including 1895. While this is partly due to diversion of land in that section to other than dairy uses, much of it is directly ascribable to the transfer of the patronage of many New York dealers to the distant producers resulting from inducements offered by the long

distance roads. It is probable that in course of time the milk demand in the New York market will equal the producing capacity of all the various localities included within the present uniform rate territory, and this is considered in the findings; but it is also probable that the carriers will be able, through improved transportation methods, to bring milk daily over much greater distances than they do now, and deliver it at their New York City terminals in good condition and at a suitable hour. The course of the West Shore in recently extending the uniform milk rate to a point near Buffalo, so as to cover a total distance of 417 miles from its Weehawken terminal, illustrates this view. The interests of all milk producers, whether located within 50 or 250 miles of New York City on any of the lines, in retaining the share of this traffic to which their nearer location would naturally entitle them, are plainly imperilled under a uniform rate for the transportation service. This milk territory when the *Howell Case* was decided was much less extensive than it is now, and what has since been done by carriers under the uniform rate system to add to the volume of their traffic, with little regard to its origin or the cost of service, would doubtless be continued in greater or less degree, if that system should be retained. As the service is now performed, the single rate for all distances is fair neither as between the carriers nor as between the differently situated producers.

But whether the area of supply has been unnecessarily increased or not under the uniform rate and the practices of the carriers, the right of producers nearer the market to a rate which is reasonable in itself for the service rendered, and relatively reasonable as compared with the rate charged for the service to other producers of milk, must be upheld. Considering the character and constancy of the traffic, a transportation charge, which is about 25 per cent of the value of the milk, applied on distances as short as 50, 75 or 90 miles seems clearly excessive; and when the same rate is applied by the same carrier over distances of from 264 to 335 or more miles, so that much greater service is rendered for a charge no higher than is imposed on any of the shorter-distance milk, disparity in treatment as to a highly desirable and easily handled traffic is shown to a degree that has not been justified in this case. While the service is special, particularly in the matters of speed, safe carriage and prompt delivery,

and refrigeration when necessary, the traffic is regular for each day, and specified equipment and crews can be constantly employed in the service, with all the economy resulting from such conditions. While the service costs more, it yields more, and the findings show that per ton moved the revenue from milk is four or five times the revenue derived from freight generally. Under economical operation the 32-cent rate on milk and 50-cent rate on cream must afford a reasonable profit to the carriers for the service rendered by them over the extreme distances of 264 to 335 miles shown in this case. Whatever service beyond ordinary freight service may be necessary to provide transportation for the shorter-distance milk is also required for milk from the longer-distance points, and, to some extent, more of such extra service is needed by the latter. That the carriers may find it necessary to provide special train service on account of the volume of their business in a particular line of traffic, like milk, is no reason for greatly disproportionate rates on less distant milk, some of which, as on the Erie east of Port Jervis, or on the Ontario & Western south of Bloomingburgh, requires comparatively little or no icing, and much less fast service than is necessary to bring the long-distance milk to the terminal at a suitable hour for delivery. It costs the carriers more to transport milk from the longer-distance points of shipment; it costs *something* more to transport a car of milk for every additional mile it is hauled, both in fuel and wear on track and equipment, and sometimes something for additional labor.

The present system of a uniform or blanket rate on milk and also on cream from all stations on the various defendant lines west of the Hudson River must be held unlawful under both sections 1 and 3 of the Act to Regulate Commerce, and the resulting unreasonableness, injustice and wrongful prejudices and preferences should be corrected.

Charging 32 cents on a 40-quart can of milk weighing 100 pounds, and no more than 12 cents on a 15-quart case of bottled milk also weighing about 100 pounds, nor more than 9.6 cents on a 12-quart case of about 70 pounds, being the same per quart, $\frac{1}{4}$ of a cent, on each, or carrying for 32 cents $2\frac{1}{2}$ times the weight when the shipment is in bottles or cases instead of in cans, is a disparity in rate for like weight carried, or in service for like rate, for which there has been little attempt at justification in this case.

Several witnesses in the employ of defendant carriers considered the bottle or case rate too low as compared with the rate on cans. One witness endeavored to justify the difference by the fact that more of the filled cases and many more empty cases can be carried in a car than is possible or practicable with the shipment in cans; but this results in no advantage, since it appears, as shown in the findings, that under the same rate on case and can milk the car loaded with cans yields about 86 per cent greater revenue than the car loaded with cases. It is suggested in one of the briefs as a reason why the same rate should be charged that the bottle method has come in vogue because it largely enables the consumer to obtain clean and pure milk. It is true that by shipping in the smaller package, the bottle, the identity of milk sent from a given point or by a particular shipper may be preserved, but we are unable to see how that or any other safeguard as to quality constitutes a reason for equal rather than higher rates on a grade better than that which is handled in large cans, especially when the quality of the can milk generally sent to and used in the New York market is conceded to be quite up to the standard prescribed by law. On the other hand, it is plain that the producer shipping in cans from a point where bottling is also done by a condensary, a creamery, or by another shipper, pays much more per hundred pounds, including the can, than the shipper in bottles, including the bottles and case, for transportation to the same point. Besides, the bottle milk sells usually at a slight advance per quart over milk delivered from the can. The drippings from ice placed in the box containing bottle milk, during a portion of the year at least, resulting in damage to the car, is also an item to be considered in connection with the greater weight carried by defendants in transporting milk shipped in that way. The facts indicate that the rates on milk in cans should be lower than those on bottle milk from all stations by at least $\frac{1}{4}$ of a cent a quart, and if we were only dealing with the question of discrimination in favor of the bottle method, we should have little difficulty in ordering that difference to be made effective. But independently of what should be the just relation of rates on can and bottle milk, the case requires determination of what are reasonable and otherwise lawful rates on milk in cans from stations on the various lines. This constitutes the main branch

of the investigation, and in view of the substantial reductions to be ordered in can milk rates from the nearer stations, we think it advisable, under all the circumstances, to refrain for the present from disturbing the rate on milk when shipped in bottles. That rate, $\frac{1}{4}$ of a cent per quart, is no more than reasonable compensation to the carriers for service rendered in carrying shipments in bottles from the less distant points where the reductions in can milk rates will be made effective, and the carriers will be enjoined from diminishing the differences so resulting in can and bottle milk rates from such stations. On the contrary, we believe that the rate per quart on bottle milk could well be made $\frac{1}{4}$ of a cent per quart higher from all milk shipping stations than is charged on shipments in cans, and that the carriers would only be serving their just interests by so doing. The proportion of bottle milk and cream ranges, as computed from statements filed for 1894, from less than 4 per cent of the total milk and cream on the Ontario & Western to between $13\frac{1}{2}$ and 16 per cent on the Erie and Lackawanna, and such percentages of total traffic, in view of the constantly increasing New York demand, are not regarded as having operated to greatly diminish the general custom of shipping milk in cans. The foregoing considerations, in connection with the further peculiar condition that ordering a uniform difference of $\frac{1}{4}$ of a cent a quart in favor of can milk would operate to either reduce the can rate from the far-off points as low as 24 cents or to raise the bottle milk rate 8 cents per 40 quarts from those points, indicate that the general adjustment of rates on can and bottle milk should, for the present, be left for the carriers to arrange.

Upon consideration of all the facts and circumstances, and taking into account the peculiarities of this milk and cream service, we conclude as follows:

That there should be, instead of the present common group with uniform rates per 40-quart can of 32 cents on milk and 50 cents on cream, at least four divisions of stations, each division or group taking different rates as hereinafter indicated. The first group should extend 40 miles from the terminal in New Jersey. This distance is still within New Jersey except a few miles over the Erie and West Shore (the Ontario & Western running over the West Shore tracks from Cornwall, N. Y., to Weehawken,

N. J., 52 miles, and not carrying traffic from points below Cornwall), and there are few if any interstate shipments of milk from points in this group. The second group should cover a distance of 60 miles, ending at points about 100 miles from the terminal. The third group will embrace stations within the next 90 miles and extend about 190 miles from the terminal. The fourth division will comprise stations beyond 190 miles.

Ordinarily, the branch line traffic should pay more, but most of the branch lines in the nearby section are short, all of them have heretofore been given main line rates on this traffic, and some of them pass through main line stations of other roads or lead to or near the Hudson River where the traffic is affected by the competition of a line of steamers. Again, with an additional charge over main line rates from nearby branch line points, applying the same rate on main and branch lines in the distant region, which the long-distance carriers will doubtless deem necessary, would hardly be consistent. In view of these facts, we think that the group distances and rates for this traffic should be made to apply on branch as well as on main lines.

The rates charged on milk in 40-quart cans should not exceed 23 cents from the first or 40-mile group of stations, 26 cents from the second or 60-mile group, nor 29 cents from the third or 90-mile group. A rate of 32 cents per 40-quart can of milk from stations more distant than 190 miles is not unreasonable. Cream is four or five times more valuable than milk, and we see no reason for disturbing the present difference of 18 cents in the rates on these commodities.

On the basis of the present rates per 40-quart can of 32 cents on milk and 50 cents on cream from stations more than 190 miles from the point of delivery, the rates on shipments in cans from the various groups will be as follows:

Group 1. — 40 miles from terminal.

Can Milk,	23 cents.	Can Cream,	41 cents.
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Group 2. — Next 60 miles.

Can Milk,	26 cents.	Can Cream,	44 cents.
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Group 3. — Next 90 miles.

Can Milk,	29 cents.	Can Cream,	47 cents.
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Group 4. — Beyond 190 miles from terminal.

Can Milk,	32 cents.	Can Cream,	50 cents.
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These relations should be maintained, and any necessary grading at the end of one and the beginning of another group should apply over the shortest possible distance. It will be noted that the 3-cent lower rate on can milk from each less distant group is substantially 10 per cent less than the rate from stations in the preceding more distant group; and that for each division of stations the cream rate in cans is 18 cents higher than the can milk rate from such station. Any reduction which may hereafter be made in the present rate of $\frac{1}{4}$ of a cent a quart on bottle milk should be followed by corresponding change in the rate from each group on can milk, and any lowering of the rate on cream in bottles should also result in like change in can cream rates. Nothing here said is intended to preclude the carriers from increasing their rates on bottle milk and cream without changing the rate on the same article when shipped in 40-quart cans.

The foregoing group distances are not applicable to the Ulster & Delaware road. This line passes by difficult grades over the Catskill Mountains, and all its milk is gathered beyond the mountains between Bloomville, N. Y., its terminus, 175 miles from Weehawken, and a point on its line at or near Fleischmann's, N. Y., 132 miles from Weehawken. The present rates on milk and cream over this line from the territory mentioned do not appear to be unreasonable or otherwise unlawful, under the circumstances. This road connects with the West Shore at Kingston, which is about 88 miles from Weehawken. The second or 60-mile group runs out 100 miles from that terminal, and for the Ulster & Delaware, we think the third group from the terminal should end at about 130 miles on that road from Weehawken, and the remainder of its mileage, about 50 miles, should constitute its fourth group, from which 32 and 50-cent rates on can milk and cream are not deemed unreasonable. Any shipments made from points on this road in the second group out from Weehawken or from the third group of 30 miles above mentioned, should not be charged higher than the maximum rates herein determined for the second and third groups on other lines; and what is above required in case of reduction in the rate on bottle milk or cream is also to be observed.

Using the short-line distance, all points on the Wallkill Valley come within the second or 60-mile group. A few points on the

Lehigh & Hudson River *via* the Erie, are in the third group, but those points may be reached by other connections over distances which come within the second group. The rates from all points on the Wallkill Valley and Lehigh & Hudson River should not exceed those applicable from the second or 60-mile group.

Points on the Jefferson division or Carbondale branch of the Erie are in group 4 by the Erie distance, but some of them are in group 3 by a shorter distance route *via* the Scranton branch of the Ontario & Western. The Erie should charge group 3 rates from points on its Carbondale branch which can be reached over distances less than 190 miles by using the Scranton branch of the Ontario & Western, and it is hereby granted such relief from the operation of the 4th section as may be necessary to enable it to lawfully effect that purpose.

The Susquehanna is entitled, on shipments of milk and cream from New York points which it carries through New Jersey and delivers in New York City, to charge such an addition to its rate to Jersey City as is reasonably warranted by the greater cost of delivering in New York.

The New Haven road runs through entirely different territory from that which is penetrated by the other defendant lines. It gets no milk within 72 miles of New York and none beyond 163 miles from that city, making a milk territory of about 91 miles, and its rates are now upon a much lower scale than is charged by other carriers or than is herein found lawful for such carriers over like distances from the terminal. Rates of 25 cents per 40-quart can of milk or cream, 22½ cents per 30-quart can and 20 cents per 20-quart can, for the group distances above mentioned having been heretofore maintained and being now in effect will have no greater influence upon the traffic of the other carriers or the interests of producers along other lines under the changes in rates to be made on such other lines. The New Haven, while charging only 25 cents per 40-quart can, also charges 1 cent per quart on bottled milk or cream. That it makes no lower charge on milk than on cream may be open to some criticism, but its rate on milk is already reasonably low, and we do not feel inclined to disturb its schedule on that account. No order will now be entered as against that company.

Although we find little reference in the record to the custom

of some of the carriers to charge 32 cents per can, whether holding 40 quarts or less quantity, and the practice on most of the lines is to ship milk in 40-quart cans, we note that the New Haven road charges less for 30-quart and for 20-quart cans of milk and that the recent tariff of the West Shore provides for charging the per quart rate on cans holding less than 40 quarts. We think provision should be made by all the defendants for a reasonably less rate *per can* when the can capacity is less than 40 quarts, but a somewhat higher charge *per quart* on cans of less than 40-quart capacity would be proper.

The groups or divisions herein defined appear to include stations on the various lines as follows:

MAIN LINES.

GROUP 1.....40 miles from terminal. 23-cent rate.

West Shore.....Tappan, N. Y., 19 miles, to Jones Point, N. Y., 39 miles.

Erie.....Suffern, N. Y., 31 miles, to Tuxedo, N. Y., 37 miles.

GROUP 2.....Next 60 miles. 26-cent rate.

West Shore.....Iona Island, 41 miles, to Saugerties, 99 miles.

Erie.....Southfield, 41 miles, to Pond Eddy, 99 miles.

Ontario & Western.....Cornwall, 52 miles, to Summitville, 98 miles.

Susquehanna.....Unionville, 74 miles, to Middletown, 68 miles.

Lackawanna.....Portland, Pa., 82 miles, to Spragueville, about 96 miles.

Lehigh Valley.....Easton, Pa., 76 miles, to Whitehall, 99 miles.

GROUP 3.....Next 90 miles. 29-cent rate.

West Shore.....Catskill, 110 miles, to Canajoharie, 190 miles.

Erie.....Parker's Glen, 102 miles, to Susquehanna, 191 miles.

Ontario & Western.....Mountaindale, 101 miles, to Franklin, 190 miles.

Lackawanna.....Henryville, about 101 miles, to New Milford, about 188 miles.

Lehigh Valley.....Laury's, 101 miles, to Ransom, 189 miles.

GROUP 4.....Beyond 190 miles. Present rate 32 cents.

Stations on defendant lines located more than 190 miles from terminal.

BRANCHES AND CONNECTIONS.

West Shore.....

Wallkill ValleyGroup 2. All stations.

Ulster & Delaware.....Group 2. Stony Hollow, 94 miles, to Olive Branch, 98 miles.

Group 3. (30 miles.) Brown's station, 101 miles, to Pine Hill, 126 miles.

(Stations beyond are in fourth division.)

Erie.....

Newburgh branch from Turner's....	Group 2.	All stations.
Newburgh branch from Greycourt.	" "	" "
Pine Island branch.....	" "	" "
Montgomery branch	" "	" "
Middletown & Crawford branch....	" "	" "
Jefferson or Carbondale branch....	Group 8.	Stations from which short line distance <i>via</i> Scranton branch of O. & W. is 190 miles or less.

Group 4. All other stations.

Lehigh & Hudson River.....Group 2. All stations.

Ontario & Western.....

Philadelphia, R. & N. E.....	Group 2.	All stations to Hudson River.
Ellenville branch	Group 2.	All stations.
Scranton branch.....	Group 3.	All stations to Forest City, 190 miles.
	Group 4.	All stations beyond 190 miles.
Delhi branch	Group 3.	Stations to DeLancey, 190 miles.
	Group 4.	Delhi, 196 miles.
Port Jervis, Mont. & N. Y.....	Group 3.	All stations.
Other branches and connections....	Group 4.	All stations.

Branches and connections of other lines are all beyond the 190-mile distance reached by Group 3.

The defendants affected by this decision should proceed immediately to readjust their rates in accordance with the foregoing conclusions, and publish and file the new rate schedules on or before April 15 next.



IN THE MATTER OF THE TARIFFS AND CLASSIFICATIONS
OF THE PENNSYLVANIA RAILROAD COMPANY
AND OTHER COMPANIES.

(No. 385.)

Decided April 3, 1897.

Investigation of freight rates charged by carriers to southern points during a rate war in June and July, 1894 (report of which was duly made and published—Eighth Ann. Rep. Int. Com. Com., 20-24), discontinued on supplemental report and opinion stating the restoration on August 1, 1894, of rates in force prior to June of that year, and citing decision of Commission awarding reparation to injured merchants and dealers at Lynchburg, Va. (6 I. C. C. Rep., 632).

SUPPLEMENTAL REPORT AND OPINION.

BY THE COMMISSION:

On June 21, 1894, the Commission instituted an inquiry in this matter on its own motion by order of that date, stating in the recital of such order as follows:

“Whereas it appears to this Commission from an inspection of the joint tariffs of rates upon interstate traffic to points in the States of Georgia, Tennessee, Alabama, and other southern territory east of the Mississippi River and south of the Ohio and Potomac rivers, published and filed by the carriers hereinafter named, that such carriers in many cases make a greater charge for the transportation of such traffic for a shorter than a longer distance over the same line in the same direction, the shorter being included in the longer haul, and that by reason of recent changes in these tariffs of rates the number of these departures from the rule of the statute has been greatly increased, and the disparity between the rates for the longer and shorter distances has in many cases been greatly enlarged; and also that there is reason to believe that the requirements of section 6 of the Act to

Regulate Commerce, and the regulations of this Commission thereunder, are not complied with in the filing and publishing of said tariffs, in this, among other things, that notice of changes in rates, as required by said section, has not been given to this Commission, nor to the public, as required by said regulations."

Carriers engaged in transportation to or between points in the Southern States and named in said order were thereby required to appear before the Commission in Washington, D. C., on July 6, 1894, "to make known such excuse, explanation, or justification which they may respectively be advised exists for the aforesaid nonconformity with the requirements of the statute and regulations of this Commission apparent on the face of said tariffs; and for the further purpose of a general examination and investigation of their classifications and tariffs on file in the office of this Commission now in use on their respective lines, as well as all such as have been in use thereon since April 30, 1894, and their practices in connection therewith, to the end that any changes therein may be made which shall be found proper or necessary in order to bring them and the conduct of business thereunder into more complete conformity with the law."

The matter was duly heard. At the hearing nearly every carrier named in the order was represented, and a report of the investigation was thereafter made and published, the same appearing on pages 20 to 24, inclusive, of the Eighth Annual Report of the Commission to Congress (1894). It was found by the Commission in said report that the rate war which prevailed in June and July, 1894, as to Southern freight traffic had resulted in the charging of grossly discriminating and relatively unreasonable rates during that period on almost every road. But the rate war having been discontinued by the carriers through the restoration, on August 1, 1894, of the rates in force prior to June of that year, no order was entered.

About the time when this investigation was instituted two cases were brought by the Board of Trade of Lynchburg, Va., against carriers from New York and Boston to Lynchburg, Va., and Knoxville, Tenn., based upon disparities in rates which had been suddenly caused by large reductions in rates to Knoxville at the commencement of this southern rate war. The cause of complaint in those cases was removed by the above mentioned restor-

ation of charges on August 1, but a number of merchants and dealers of Lynchburg, members of the complaining board of trade, intervened in February, 1895, and filed supplemental complaints alleging damage and claiming reparation. After hearing, the reparation claims were allowed by the Commission (6 I. C. C. Rep., 632), and the orders entered in those cases against the carriers to Lynchburg were complied with.

With the foregoing addition to the published report of the investigation, further action herein appears unnecessary, and an order discontinuing this proceeding will be entered; but nothing said in the original or in this supplemental report is to be considered as constituting approval of the rates of the carriers named prior to or since the rate war of June and July, 1894.

FREIGHT BUREAU OF THE CINCINNATI CHAMBER
OF COMMERCE

v.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY; LOUISVILLE & NASHVILLE
RAILROAD COMPANY; *et al.*

Decided May 22, 1897.

1. A city is entitled to benefits arising from its location, and the fact that it enjoys exceptional advantages in one respect is no reason why it should be subjected to discrimination in other respects.
2. The location of Cincinnati upon the north bank of the Ohio River, and the fact that railroads leading south must cross that river by expensive bridges for which an arbitrary or toll is charged, or allowed in the division of rates, justify some higher differential from Cincinnati over rates from Louisville, on the south bank of the river, to destination points in so-called "Montgomery and Southwestern Territory."
3. Distance is an important element in the determination of rates, and in the absence of other influences it is a controlling factor. When carriers claim justification for higher rates from a competing locality on the ground of greater distance, and the complainant, representing such locality, fails to show circumstances which operate to eliminate distance from consideration or to counteract its influence, such higher rates, if made in accordance with the principle of distance, will not be held unreasonable.
4. While existing differentials which result in higher freight rates from Cincinnati than from Louisville to "Montgomery Territory" and "Southwestern Territory" may, as a whole, discriminate against Cincinnati, the inequality arises, if it exists, through combinations of rates to Cincinnati and Louisville from territory north of the Ohio River with rates from those points south; there is no showing whether the fault lies with rates north or south of the river, and neither of the carriers operating north of the river is a party to this proceeding. It fairly appears, on the other hand, that if such differentials were entirely abolished, the rates from a large section north of the Ohio would be against Louisville. The complainant asks in its petition that the higher rates from Cincinnati than from Louisville be prohibited; readjustment of rates is asked for, and only the fact of distance is presented as a basis for determining whether the higher rates from Cincinnati are unjust or what rates would be just. *Held*, That the complaint should be dismissed without prejudice.

E. P. Wilson and *W. G. Minor* for complainant.

Edward Colston for Cincinnati, New Orleans & Texas Pacific Ry. Co.

Edward Baxter for Louisville & Nashville R. R. Co.

M. B. Belknap and others for the City of Louisville, Ky.

A. W. Wills for the City of Nashville, Tenn.

R. P. and *C. A. Hughes* for Business Men's Association of Evansville, Ind.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

The Freight Bureau of the Cincinnati Chamber of Commerce is an organization of the business men of the city of Cincinnati, Ohio, regularly formed and maintained for the purpose of protecting the transportation interests of that city. That organization prosecutes this complaint to correct certain alleged discriminations made by the defendants in freight rates against Cincinnati and in favor of the city of Louisville, Ky.

Cincinnati and Louisville are both important centers for the distribution of merchandise to the south, and are also the main avenues through which commerce from the north of the Ohio River passes on its way across that river to the south. For the purpose of establishing rates from these two cities and also from other points, the Southern Territory is thrown into four divisions, namely: the Carolina Territory, embracing North Carolina and the northern portion of South Carolina; the Atlanta Territory, embracing the balance of South Carolina, the whole of Georgia, all of Florida which is reached by rail, and a small portion from the northeast corner of Alabama; the Montgomery Territory, embracing the balance of Alabama and a narrow strip from the eastern side of Mississippi; and the Southwestern Territory, comprising the section between the Montgomery Territory and the Mississippi River. Of these four divisions, the Carolina and Atlanta Territories are much more extensive than the Montgomery and the Southwestern, in area, population, and wealth.

The rates from Cincinnati and Louisville into the Carolina and Atlanta Territory are the same. Differentials prevail in favor of

Louisville to points in Southwestern and Montgomery Territory. The following tables show such differentials in cents per hundred pounds:

MONTGOMERY TERRITORY.

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Differential	10	10	10	8	7	6	4	2	2	2	4	4	4

SOUTHWESTERN TERRITORY.

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Differential	10	10	10	5	5	5	5	4	5	5	4	5	10

**TO NEW ORLEANS AND
POINTS TAKING NEW
ORLEANS RATE.**

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Differential	8	8	8	4	4	4	3	2	2	2	3	3	4

TO MERIDIAN, MISS.

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Differential	8	8	8	7	6	5	4	2	2	2	4	4	4

No question was made as to the fact that these differentials against Cincinnati were actually enforced, but the Louisville & Nashville Railroad Company, the city of Louisville, and the other communities similarly affected, undertook to justify these rates upon the following grounds: First, that the distance from Cincinnati to the points in question was greater; second, that the location of Cincinnati upon the north bank of the Ohio River properly subjected its traffic to an additional charge in crossing the river; third, that, inasmuch as Cincinnati enjoyed the cheaper freight rate from the markets in which she bought her supplies, she ought in justice to pay a higher rate to those points where she disposed of this same merchandise.

There was no question as to the relative distances from Louisville and Cincinnati into the Carolina and Atlanta Territory. The Cincinnati, New Orleans & Texas Pacific Railway Company under the style of "The Queen & Crescent Route," operates a line of railroad from both cities into all the territories, and the Louisville & Nashville Railroad Company also operates over its own iron and through its connections into all the territories. The interests of the Queen & Crescent route seem to lie with the city of Cincinnati, while those of the Louisville & Nashville are rather with Louisville. By either one of these lines traffic from

either city into Carolina Territory passes through Knoxville, Tenn., and the distance from Louisville by either route is some 15 miles less than that from Cincinnati, so that in reference to the Carolina Territory Louisville has this slight advantage in distance. Traffic from either city into the Atlanta Territory passes usually through Chattanooga, Tenn. The distance by either route from Louisville to Chattanooga is substantially 20 miles less than from Cincinnati, so that in reference to the Atlanta Territory Louisville has the advantage in distance to this extent.

There was little or no difference between the parties touching these distances, but when the question of distance to the Southwestern and Montgomery Territories was reached, a very considerable difference in the estimates of the different parties appeared. This difference arose from the fact that each party insisted on the right to compute a particular distance as best subserved its own purpose. This was sometimes by taking the shortest possible distance by any combination of railroads; sometimes by taking the combination which would give the long haul to the Louisville & Nashville or the Queen & Crescent route, as the case might be; and sometimes by the shortest combination over which traffic actually moved. In the view we have taken of the case this last method is the only one which it is material to consider here. Computing the distances upon this basis to numerous points referred to in the testimony, we find that there is a substantial difference in favor of Louisville to all points in these two territories. It is, of course, impossible to give an exact average, but we find that in the case of Montgomery Territory, having an average distance of 500 miles from Louisville, the average distance from Cincinnati would be 70 miles greater, and that in the case of Southwestern Territory, having an average distance of 650 miles from Louisville, the distance from Cincinnati would be 90 miles greater. The distance to New Orleans is from Louisville 743 miles, from Cincinnati 830 miles.

A straight line drawn from Cincinnati through Louisville to the southwest would pass nearly through the center of these two territories. Louisville is 110 miles from Cincinnati, so that the average difference in distance in a geographical line from the two cities to all points in the two territories would be at least 100 miles.

The Ohio River has usually been recognized as a barrier, the crossing of which entailed an unusual expense upon traffic. As a rule the bridges across that river are not owned by the railway companies controlling the traffic there to the north or to the south, but were originally constructed and are still owned by independent companies. In some instances these companies transfer the traffic themselves, but usually they lease the bridge to the carrier. This has occasioned an extra charge upon all freight crossing the river. Formerly the charge was much higher. At the time of this hearing, in all divisions upon through business an arbitrary of 2 cents per 100 pounds in carload lots and 3 cents in less than carload lots was allowed, and the same difference in rates was made according as the destination was upon the north or south bank of the river; that is, the rate to Louisville from points north would be that much higher than the rate to Jeffersonville. So, too, the rate from St. Louis to Louisville and Cincinnati was the same, although the distance to Cincinnati was 68 miles greater; but it was said upon the part of the defendant, and not denied, that this was owing to the location of Cincinnati upon the north bank of the Ohio. As appears later, the bridge at Cincinnati over which the Queen & Crescent route is operated is owned by the railroad itself, so that traffic passing over that route is not in fact subjected to any bridge toll as such.

As already stated, Cincinnati and Louisville are both centers of distribution. The merchants and manufacturers of these two cities purchase their supplies in the eastern and northern markets and wholesale to the Southern Territory in question. The rate from the eastern markets to these cities is less to Cincinnati than to Louisville; that is, the Cincinnati merchant can purchase his goods in New York or Philadelphia and transport them to Cincinnati cheaper than can the Louisville merchant; and it would appear that the difference in this freight rate is about the same in favor of Cincinnati as is the differential against that city.

It also appeared that from points farther west, like Buffalo and Pittsburg, the rate to Cincinnati was lower than to Louisville; but the complainant earnestly contended that while this might be true, the advantage in the freight rate to Cincinnati was much more than overcome by the differential against Cincinnati when

the goods were shipped out, and insisted that with reference especially to the great States of Ohio, Indiana, Illinois, Michigan and Wisconsin, the rates were such that merchandise was diverted to Louisville both when it would naturally be distributed from Louisville or Cincinnati, and when it was simply shipped through one of these points upon its way south. For instance, Columbus, Ohio, is 116 miles from Cincinnati, and 226 miles from Louisville. The rates were, on the first six classes:

To Cincinnati.....	25	23	20	18	9	8
To New Albany.....	35	33	24	16	14	11
Difference in favor of Cincinnati.....	10	10	4	3	5	3
Montgomery differential against Cincinnati.....	10	10	10	8	7	6

Leaving a net difference against Cincinnati upon classes 3, 4, 5 and 6, of 6, 5, 2 and 3 cents, respectively. The rate is made to New Albany since the rate from New Albany to southern points is the same as the rate from Louisville, although the rate to Louisville would be about 2 cents per 100 pounds greater. The above result would mean that while the distance from Columbus to Montgomery and Southwestern points was somewhat in favor of Cincinnati, the rates were such that all freight of classes 3, 4, 5 and 6, must necessarily pass through Louisville on its way to this territory.

The complainant furnished us with many comparative tables like the above, the correctness and fairness of which were sometimes questioned and sometimes conceded by the Louisville & Nashville Company. Such tables are apt to be misleading from the fact that the classification in use north and south of the Ohio River is not the same; that in use to the north being the "Official" Classification while the "Southern" Classification is used south of the river. Again, it is undoubtedly possible, by a judicious selection of localities, to establish the fact that either Cincinnati or Louisville has the advantage in this respect. Without taking up particular cases, however, we are of the opinion, and find from the testimony introduced before us, that in respect to the classes 1, 2, 3, 4, 5, and 6, the rates from this territory are against Cincinnati on the last three classes. We think that it fairly appears that upon the first three classes they are as favorable to Cincinnati as to Louisville and perhaps a trifle more so. We mean that merchandise embraced within the last three classes could be transported from the greater part of this territory to points in Montgomery and

Southwestern Territory more cheaply through Louisville than through Cincinnati, and this would often be so when the total distance was in favor of Cincinnati.

That this must have been so appears from the fact that the Cincinnati, New Orleans & Texas Pacific road insisted upon its right and was allowed to "shrink the rate" upon such merchandise passing through Cincinnati sufficiently to make the rate the same as it would be through Jeffersonville to points in the Montgomery Territory. We understand this to mean that the last-named railroad was allowed to make the rate the same through Cincinnati that it would be through Jeffersonville, and to accept that much less as its division of the through rate.

No testimony whatever was introduced as to classes A, B, C, D, E, H, F, and G. These classes cover, generally speaking, meat, hay, grain, flour, meal and other products of grain, and would embrace a considerable portion of the total tonnage from western cities to southern points. There was nothing to show whether the rate from points in this territory to Cincinnati and Louisville, respectively, was or was not a reasonable rate, nor whether the transportation, which would be by different lines, was or was not under the same conditions. None of the carriers participating in such transportation north of the Ohio River were parties to this proceeding.

In 1866 the Louisville & Nashville Railroad Company completed its road from Louisville to Cincinnati. This gave Cincinnati an all-rail line through Louisville, Knoxville and Chattanooga into all the Southern Territory. The distance from Cincinnati to Louisville is 110 miles, and all traffic from Cincinnati by this line, into whatever part of the Southern Territory it was destined, passed over this greater distance. The Louisville & Nashville Company early established a heavy differential against Cincinnati upon all this traffic. In 1878 the differentials by classes were:

1	2	3	4	5	6	A	B	C	D	E	H	F	G
20	17	14	12	10	9	7	8	7	7	8	13	14	23

In 1880 the Cincinnati Southern Railroad was opened for operation. By this line the difference in distance from Cincinnati and Louisville to Chattanooga was reduced from 110 to about 20 miles. This made the distance from Cincinnati into Carolina and Atlanta

Territories substantially the same. Cincinnati therefore insisted that the differentials against it upon traffic to these territories should be abolished. Traffic from Cincinnati into Montgomery and Southwestern Territories did not go to Chattanooga, and the distance into those territories was not, therefore, correspondingly reduced, although it was lessened some 25 miles. The result was a new agreement in 1880 by which the differentials into Carolina and Atlanta Territories were abolished and the differentials into Montgomery and Southwestern Territory fixed as follows:

1	2	3	4	5	6	A	B	C	D	E	H	F	G
10	10	10	10	10	10	4	5	5	4	5	5	10	15

These differentials continued in force until 1886, when the roads whose interests lay with Cincinnati secured a reconsideration of this question and a submission of it to Commissioner Ogden. From his decision an appeal was taken to Judge Cooley, who passed upon the whole question as an arbitrator. He affirmed the report of Commissioner Ogden with some minor alterations, and fixed the differentials as they now exist. Neither party was satisfied with the result, but all parties have acquiesced in the decision ever since as the best practical solution of the difficulties presented by the situation.

Louisville and Cincinnati are both basing points in rate making, and any disturbance of rates at these points disturbs the rates over large areas. The Louisville & Nashville Company insisted, and it is undoubtedly true, that upon the strength of these differentials business interests have been developed and become fixed which would be seriously disturbed by any alteration of the rates.

The Cincinnati Southern Railroad extends from Cincinnati to Chattanooga. It was built by the city of Cincinnati, or under some arrangement by which that city furnished the financial aid necessary to its construction. The road embraces as a part of its line the bridge across the Ohio River at Cincinnati. It was completed and opened for traffic in 1880. Soon after its completion it was leased to the Cincinnati, New Orleans & Texas Pacific Railway Company, a corporation organized under a charter from the State of Ohio for the purpose of leasing and operating the Cincinnati Southern Railway. The lease is from the

trustees of the city of Cincinnati, and the amount of the rental was determined by public competition. The lease is for the term of twenty-five years, the rental being \$800,000 per annum for the first five years; \$900,000 per annum for the second; \$1,000,000 per annum for the third; \$1,090,000 per annum for the fourth; and \$1,250,000 per annum for the last.

The Business Men's Association of Evansville, Ind., filed a vigorous protest against the abolishment of these differentials, setting forth substantially the same grounds of objection as were urged by the Louisville & Nashville Railroad Company. The Board of Trade of the City of Louisville was represented upon the hearing and made the same claims.

The complainant insisted that the differentials in question were maintained by the Southern Railway & Steamship Association; that the Louisville & Nashville Railroad Company dominated this association, and, therefore, that the rates in question were not the act of the railways leading from Cincinnati into the disputed territory, but that these railways, if left free from the dictation of that association, would abolish the differentials.

We have practically no evidence submitted in this case as to the organization or operation of the Southern Railway & Steamship Association, except the articles of association, which were attached to and made a part of the answer of the Louisville & Nashville Railroad Company. In these it is stated that the object of the association is "the establishment and maintenance of tariffs of uniform rates, to prevent unjust discrimination, such as necessarily arises from the irregular and fluctuating rates, which inevitably attends the separate and independent action of transportation lines." The association covers the territory in question. Rates within that territory are made by the association, and every member is required under a penalty to maintain the rate ordered, and no other rate. Membership is voluntary, and any member can at any time withdraw, and thereupon become free to make whatever rate it may elect. Both the Queen & Crescent line and the Louisville & Nashville Company were members. Undoubtedly the Queen & Crescent line would have been glad to abolish the differentials. There was nothing in the articles of the association which prevented that line from doing so by withdrawing from the association; but if it had, it would have encoun-

tered organized opposition upon the part of the other members, which would have disastrously crippled its revenues. It continued to be a member of the association and to maintain these differentials, because, on the whole, it appeared to be for its interest to do so. Whether in this view it can be said that the Queen & Crescent line acted in this matter voluntarily, or whether the situation of the parties was such, and the articles and operation of the association were such, that the different lines were practically compelled to become and continue members of it, and that the act of a single line in making a rate at the bidding of the association was really the act of all the members so that they would be subject to an order in reference to that rate, although not directly parties to it,—are questions which we do not find it material to determine in view of the disposition of the case which we make.

Upon the above facts, should the maintenance of differentials against Cincinnati be permitted?

The first reason assigned by the respondents for their continuance is that Cincinnati obtains a better freight rate from the points of origin upon articles which it distributes to this territory than Louisville, and that therefore it ought to pay a higher rate upon those articles when they go forward for distribution. We do not give much weight to this consideration. A city is entitled to the benefit of its location. The fact that it enjoys exceptional advantages in one respect is no reason why it should be subjected to discrimination in some other respects. If Cincinnati, by reason of its situation, can obtain a better rate than Louisville upon merchandise which it brings in for distribution to this Southern Territory, that is the good fortune of Cincinnati, and affords no excuse for an unjust rate upon the same merchandise when shipped out. There is, however, a degree of justice in the claim that the same rule which is applied in favor of Cincinnati in respect to incoming freights should be applied against it in respect to outgoing freights, and that if it obtains a cheaper freight rate because of being situated nearer the source of its supplies, it ought, in the same manner, to pay a higher rate by reason of the fact that it is further from the territory in which it sells.

2. The second reason put forward by the defendants in justification is that Cincinnati is upon the north bank, while Louisville

is upon the south bank, of the Ohio River, and that the unusual expense in crossing that river should be recognized as a part of the freight rate. This reason is entitled to more weight than the first. The Ohio River has always been recognized as a natural barrier, the surmounting of which entailed unusual expense. All tariffs have recognized this fact in the allowance of an arbitrary for crossing that river, and in making the freight rate to Cincinnati and Louisville from the north or from the south. Nor is this an unreasonable charge. In most cases, the bridge over which the traffic passes is owned by an independent company, which, in some instances, at least, receives a toll equal to this arbitrary. This toll was formerly much higher. There is nothing to show us that the present arbitrary is not a reasonable one in proportion to the actual cost of the service.

It is said that this ought not to be a factor in the case of the Queen & Crescent line for the reason that it owns the bridge at Cincinnati and therefore pays no toll; but that bridge must have cost something to build, and must cost something to maintain, and does entail an actual additional expense, which is fairly measured by the toll paid in other cases, unless that is excessive.

It is further urged that Cincinnati ought not to be subjected to this burden for the reason that Cincinnati built this bridge, and should therefore have the benefit of it. It does not very fully appear from the evidence in this case how the Cincinnati Southern Railroad was built. It seems that the city of Cincinnati furnished the financial backing which was necessary for its construction, and that city may perhaps be considered the owner of it. When completed, the lease of the road was sold to the highest bidder. The Cincinnati, New Orleans & Texas Pacific Railway Company pays a very considerable rent for the use of that property. The bridge was a part of the road and leased with it, and presumably the rent was proportionately greater for the reason that the road did embrace this bridge as a part of its line. It cannot be said, therefore, that the city of Cincinnati gives the use of this bridge to anyone.

We think the location of Cincinnati upon the north bank of the Ohio River justifies, to some extent, a differential against her as to territory south of that river.

3. The defendants allege as a third reason for these differen-

tials that the average distance from Cincinnati into Montgomery and Southwestern Territory is substantially greater than from Louisville.

In determining what these distances are we were met by conflicting claims as to the proper method of arriving at the short-line distance. It was contended in some instances that the shortest line which could be made between the two points by any combination of railroads should be taken, whether the ownership and operation of those railroads were such that traffic actually passed over this line or not; sometimes that the shortest line was that made by a given system and its connections, giving to that system the longest haul over its own iron; and sometimes that the route selected should be the shortest one over which traffic actually habitually passed. The latter rule is apparently the just one and has been adopted in our findings of fact.

Applying this rule, the average distance from Louisville into Montgomery Territory is 550 miles, and from Cincinnati 620 miles; the average distance from Louisville into Southwestern Territory is 650 miles, and from Cincinnati into the same territory 740 miles. We hold that these differences in distance justify a differential as against Cincinnati.

Counsel for the complainant says that distance is habitually disregarded in the making of tariffs, and that this Commission has sanctioned that disregard. It is undoubtedly true that there are many instances in which the element of distance may be overcome by other considerations, but it is equally true that this Commission has always insisted that distance was an important element in the determining of a rate, and in the absence of other influences a controlling element. Knapp, Commissioner, in *Eau Claire Board of Trade v. Chicago, M. & St. P. R. Co.*, 4 Inters. Com. Rep. 65, 5 I. C. C. Rep. 265, 290, said: "But distance, nevertheless, is an ever-present element in the problem of rates, and not infrequently a controlling consideration," and Morrison, Chairman, in *Hill v. Nashville, C. & St. L. R. Co.*, 6 I. C. C. Rep. 343, 358, laid down the rule that "in the absence of other influential conditions distance may be fairly considered a controlling element in fixing reasonable rates."

This Commission is not primarily a rate-making body. The carrier is left free to arrange its own tariffs in the first instance.

We sit for the correction of what is unreasonable and unjust in those tariffs. The carriers in the present instance have mutually agreed upon these differentials, and no one of these carriers complains by this proceeding of their propriety. The defendants who have made the differentials justify them upon the ground of distance, and no circumstances are shown by the complainant which should eliminate that element from the consideration or counteract its influence. We cannot with propriety hold unreasonable a rate which is made in accordance with the principles which we have repeatedly affirmed to be reasonable.

The complainant urges with great force that the present rates from almost all the extensive territory included between a line drawn from Buffalo to Cincinnati upon the east and the Mississippi River upon the west are such that traffic can pass at a cheaper rate through Louisville than it can through Cincinnati, so that articles manufactured within this territory can be taken to Louisville and there distributed into Montgomery and Southwestern Territory to better advantage than from Cincinnati. This is apparently true with reference to certain classes of freight. With reference to certain other classes it does not appear to be true. With reference to still other classes, which include a very considerable part of the entire tonnage of such traffic, we are furnished with no testimony. The fact that the Queen & Crescent line has been allowed to "shrink the rate" from this territory bears strongly in favor of the complainant's claim. This inequality arises, if it exists, by a combination of the rates from territory north of the Ohio to Cincinnati and Louisville with the rates from these points south, and it does not appear whether the fault lies in the rate north of the river or the rate south. It fairly appears that if the differentials were entirely abolished the rates from all this territory would be against Louisville. Neither of the carriers which make the rates north of the Ohio is a defendant in this proceeding. While, therefore, there may be merit in the claim of the complainant that the rates from this territory through Cincinnati and Louisville as a whole discriminate against Cincinnati, we have not in this case the facts necessary to show where this discrimination is, nor the parties to give us jurisdiction to correct it.

The city of Cincinnati insists that having assumed the burden

of constructing the Cincinnati Southern Railroad, it should derive some benefit from it. The answer is that it does. Assuming that the rent paid by the present lessee is not compensatory, still the merchants of Cincinnati obtain an enormous advantage by having gained an entrance free of differential into the Carolina and Georgia Territories, which are several times greater in area, population and wealth than the Montgomery and Southwestern Territories. This much was obtained by reducing the difference in distance into the first-named territories from 110 miles to almost nothing. The distance into the other territories was not materially reduced, and the same advantage in abolishing the differential could not be legitimately expected.

The complainant asks by its petition that the differentials be altogether abolished. To this we cannot assent, since we think that the location of Cincinnati upon the north bank of the river, and especially the greater distance to the territory in question, justifies a differential. The petition does not ask for a readjustment of the present differentials, and no testimony was introduced upon the trial looking to that end. We therefore express no opinion upon that branch of the case. We have been furnished with no testimony tending to show what the actual movement of traffic is under the influence of the present differentials, nor how the trade of the various competing cities is affected, nor what the relative cost of service from the different points into the competitive territory is. In short, we have nothing, except the mere fact of distance, upon which to pass an opinion as to whether the present differentials are just or to determine what would be just.

It should also be remarked in this same connection that we cannot be unmindful of the consequences of any order altering the present rates. This is not a question of a single rate upon some one commodity. Cincinnati and Louisville are both basing points. To abolish or change these differentials would disturb the rates through a large area, and would affect immediately communities and carriers not represented in this hearing. While we should not hesitate on this account alone to correct a manifest injustice, we do hesitate to interfere until we are clearly satisfied that a substantial wrong exists, and that we have the necessary information to determine what is right.

Complaint dismissed without prejudice.

MT. VERNON MILLING COMPANY
v.
CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY
COMPANY.

(No. 434.)

Complaint filed December 4, 1895. Hearing at Chicago, Ill., February 18, 1896, and at Mt. Vernon, South Dakota, July 23, 1896. Decided May 28, 1897.

Defendant's failure or refusal to provide at its own cost and thereafter maintain a spur or side track from its main line to complainant's mill and elevator at Mt. Vernon, South Dakota, was not, by the evidence adduced as to the provision and maintenance of side tracks from defendant's line to mills or elevators at other points in South Dakota, shown to be in violation of section 8 of the Act to Regulate Commerce.

William G. Milne for complainant.

Burton Hanson and *George R. Peck* for defendant.

REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

The complainant, the Mt. Vernon Milling Company, alleges:

1. That the defendant, the Chicago, Milwaukee, & St. Paul Railway Company, is a common carrier engaged in the transportation of passengers and property between points in the State of South Dakota and points in the State of Wisconsin, and as such common carrier is subject to the Act to Regulate Commerce.

2. That, in violation of section 3 of the Act to Regulate Commerce, said defendant has given undue and unreasonable preference and advantage to complainant's competitors in both the milling and grain business, in that it has refused the above-named complainant a location on its side track at Mt. Vernon, which it granted to grain dealers at Mt. Vernon and elsewhere.

3. That defendant "refused a switch to said complainant, which they have granted to competitors at Mitchell and Plankinton, said competitors being employed in precisely the same business."

Complainant prays that after due hearing and investigation this

Commission make an order commanding the defendant to cease and desist from said violations of the Act to Regulate Commerce, and for such further order as the Commission may deem necessary in the premises, and for reparation to the amount of ten cents (10¢) per ton for grain and mill products shipped; and fifteen cents (15¢) per ton on coal received by complainant, it being alleged that said amount complainant is compelled to pay more than its competitors on account of the unreasonable advantages given them by defendant.

The defendant, answering, claims that the Interstate Commerce Commission has no jurisdiction of the subject-matter of the complaint, and that the complainant shows no breach of any legal duty on the part of defendant.

Further answering, the defendant says: "That for the better accommodation of the public, as well as for the proper, safe, convenient and efficient transaction of the defendant's business, it several years ago adopted a policy to be pursued in respect to the occupation of its station grounds by mills, elevators and other industries, which policy has ever since been followed," and is in substance "that a person, firm or corporation that desires to locate upon its station grounds must first make an application to the company therefor. That thereupon the company investigates the matter of such application, and if it is deemed for the best interests of the company to locate such industry upon its grounds, and its grounds and facilities at such station are such that it can accommodate such industry without materially interfering with the duties which it owes to the public, and the safe, convenient and efficient transaction of the company's business, such application is then granted and a lease executed by the company of that portion of its grounds so desired."

The defendant avers that "some years ago" the complainant made an application for permission to occupy "a portion of its station grounds at Mt. Vernon, South Dakota, with a flouring mill," but defendant denies that complainant has ever made application to it for "a location to be used for a grain warehouse," but avers that the application made by the complainant was for a flouring mill, which application was refused by the defendant for the reason that it "could not consistently with the proper, safe, convenient and efficient transaction of its business" at Mt. Vernon grant such application.

The defendant further avers that complainant afterwards erected a flouring mill at Mt. Vernon, but not on the station grounds of defendant, and "later on added thereto a grain elevator, and thereafter requested defendant to construct a side track to such mill and elevator, which said defendant offered to do, on condition that the complainant would pay therefor the actual cost thereof; the cost of maintaining the same to be thereafter borne by the defendant; that complainant declined to accept this offer, and defendant thereupon declined to construct such side track."

The defendant further says that there is "no flouring mill located upon its station grounds at said Mt. Vernon, neither is there a flouring mill located upon its station grounds at either said Plankinton or said Mitchell," mentioned in complaint; that there are grain warehouses located upon its station grounds at said Mt. Vernon, Plankinton and Mitchell, all of which are located upon a side track of the defendant, which was constructed and in use before said grain warehouses were erected; that if complainant desires a location for a grain warehouse along defendant's side track and upon its station grounds at Mt. Vernon, and will make application therefor, such application will receive the same consideration that is given to the like applications under similar circumstances and conditions.

The defendant further says that while they are not on defendant's station grounds there are flouring mills at Plankinton and Mitchell, and that the mill in each place has a switch which was constructed by the defendant and at its cost and expense, but that said mills were erected, and said switch tracks constructed, "as defendant is advised," before the passage of the Act to Regulate Commerce; that at the time the said side tracks were so constructed leading to said mills defendant had no settled policy in the matter of constructing side tracks to private industries, "but for many years last past" it has been the practice of the defendant to construct such switch tracks only upon the condition that the party desiring the same shall pay the actual cost thereof, and expense of maintaining the same to be borne by the defendant railway company; that this practice is adhered to in all cases excepting in special and exceptional cases where the business of the industry is of unusually large volume, and the revenue which is derived therefrom by the defendant is of such an amount as to

justify it in constructing such switch track at its own cost and expense; that Mt. Vernon is a small village of a few hundred inhabitants, and the volume of business of complainant's mill and elevator is not large enough nor sufficiently remunerative to the defendant to warrant it in constructing a switch track thereto at its own cost and expense; that it is willing to give the complainant a switch track to its mill and elevator upon the same terms that it gives such tracks and facilities to other like industries similarly situated, and has offered to do so to the complainant,—namely: that the complainant pay the actual cost of such track, the defendant thereafter bearing the cost and expense of the maintenance thereof.

FACTS.

1. The complainant, the Mt. Vernon Milling Company, is engaged in the milling and grain business at Mt. Vernon, South Dakota.

2. The defendant, the Chicago, Milwaukee & St. Paul Railway Company, is a common carrier engaged in interstate commerce between points in South Dakota and points in other States.

3. Mt. Vernon, South Dakota, is situated on the defendant's line, about equidistant between Mitchell, South Dakota, on the east, and Plankinton, South Dakota, on the west.

4. There is but one side track at Mt. Vernon, the company's regular side track built when the road was constructed, along which are located warehouses, grain houses, coal houses, etc., but no flouring mills.

5. The complainant, before erecting its flouring mill at Mt. Vernon in 1892, made an application to defendant for permission to build the same on said defendant's station grounds and along its side track, which application the said defendant denied "for the reason that it could not, conveniently, with the proper, safe, convenient and efficient transaction of its business at that station, grant such application," whereupon the complainant built the mill on its own ground and without side-track facilities.

6. No evidence was submitted to prove that the complainant made any application to defendant for location of an elevator along said defendant's right of way, on the said side track at Mt. Vernon; but subsequent to the completion of the mill, in the fall

of 1893, the complainant erected an elevator adjacent thereto and on its own ground, and afterwards applied to the defendant for a side track to said mill and elevator at the defendant's cost, to which the said defendant replied, under date of July 17, 1895, as follows:

"In reply to your letter of the 8th instant, I have to say that this company has for several years past declined to construct side tracks to flour mills except at the expense of the mill owner. If you desire to have a side track constructed to your mill on that basis we will proceed to do so any time you may desire. We must decline to do it upon any other basis."

To these terms the complainant did not agree.

7. Without the benefits enjoyed by those having side-track facilities for loading and unloading their flour, grain, etc., the complainant has been obliged to pay the sum of 10 cents per ton for grain and milled products shipped and 15 cents per ton on coal received.

There is no flouring mill located upon the defendant's station grounds at Mt. Vernon, Plankinton or Mitchell, but there is such a mill, the Parkston Roller Mill, erected in 1892, located on the defendant's ground at Parkston, South Dakota, not, however, on the main side track of the defendant's road, but upon a private switch track built after the erection of said mill to connect with the main track, the cost of said side track being borne in part by the milling company and in part by the railroad company; the former doing at its own expense about 300 feet of grading, involving the work of three teams and about five men four days, the defendant putting in the iron and ties. The milling company first applied to defendant for a side track to be built at the latter's expense, which application was denied and the above compromise agreed upon.

There is nothing in the evidence to show upon what terms the Parkston Milling Company was permitted to locate on defendant's ground; neither is there anything in the evidence showing that the complainant accompanied its request for the privileges asked for by it with any offer for the proposed use of a site on defendant's station ground.

With reference to the allegation that said defendant refused a switch track to said complainant,—a facility which it granted to

competitors at Mitchell and Plankinton, said "competitors being employed in precisely the same business,"—the testimony shows there was, in the year 1884, when the mill at Plankinton was erected, a spur track already in existence, at the end of which was a certain coal yard, and the Plankinton Mill Company erected its mill about 16 or 20 feet away from this spur track on its own ground between the main track and the coal yard, and subsequently made an application to the defendant to have the said spur track shoved over in closer proximity to their mill, which application was neither granted nor refused for several years, but finally, in the year 1888 or 1889, the milling company made a proposition which was accepted, whereby it was to do the grading and the railroad company was to furnish the rails and ties, and upon these terms the track was moved. In making this change and moving the track over closer to the mill and elevator, the curve was too short and it was necessary to start the spur about a block farther down the main track, thus lengthening said spur between 200 and 300 feet. This work, it was claimed in a letter submitted as part of the testimony of one of defendant's witnesses, "was done for the safety of track in getting in and out from the mill." Along this spur track are situated only the coal shed at the end and the mill and elevator between that and the main track. The mill originally built was destroyed by fire, but was rebuilt on the same location and later sold to present owners, who succeeded to all the rights and privileges of the original owner. The said milling company at Plankinton has paid defendant nothing for switching cars to and from its mill and elevator.

The mill at Mitchell, the defendant admits in its answer, "has a switch track leading to it, which was constructed by the defendant and at its cost and expense." The reason for granting this privilege, the defendant stated in evidence, was that "at Mitchell in 1884, when that was a very small place, just starting, some parties located a mill there and the company gave that mill a side track."

The statute of South Dakota (Dak. Comp. Laws 1887, § 146), regulating the construction and maintenance of side tracks from warehouses, elevators or mills adjacent to any station, with the main line of railroad is as follows:

"Every railroad company shall permit connection to be made

and maintained in a reasonable manner with its side track, to and from any warehouse, elevator or mill, and adjacent to any station on its line, without reference to its size or capacity, where grain or flour is or may be stored; *Provided, however*, that such railroad company shall not be required to pay the cost of making and maintaining such connection, or of the siding or switch track necessary to make the same; and *provided, further*, that a majority of the commissioners appointed under this act shall direct such railroad to make such connection and siding."

The complainant has made no application for a side track under the provisions of the statute above quoted, though not ignorant of the existence of such statute. Nor is there anything in the evidence to show that complainant offered anything towards defraying the expense of constructing or maintaining a switch or side track for its use.

As bearing upon one of the questions in this case the following decision of the Supreme Court of the United States is referred to:

In the case of the *Missouri P. R. Co. v. Nebraska*, 164 U. S. 403, 41 L. ed. 489, the court held:

"This court, confining itself to what is necessary for the decision of the case before it, is unanimously of opinion that the order in question, so far as it required the railroad corporation to surrender a part of its land to the petitioners, for the purpose of building and maintaining their elevator upon it, was, in essence and effect, a taking of private property of the railroad corporation for the private use of the petitioners. The taking by a state of the private property of one person or corporation, without the owner's consent, for the private use of another, is not due process of law, and is a violation of the 14th Article of Amendment of the Constitution of the United States."

In the same case the court said:

"The order in question was not limited to temporary use of tracks, nor to the conduct of the business of the railway company, but it required the railway company to grant to the petitioners the right to build and maintain a permanent structure upon its right of way.

"The order in question was not, and was not claimed to be, either in the opinion of the court below, or in the argument for the defendant in error in this court, a taking of private property for a public use under the right of eminent domain. The petitioners were merely private individuals, voluntarily associated together for their own benefit. They do not appear to have been

incorporated by the state for any public purpose whatever ; or to have themselves intended to establish an elevator for the use of the public. On the contrary, their own application to the railroad company, as recited in their complaint to the board of transportation, was only 'for a location, on the right of way at Elmwood station aforesaid, for the erection of an elevator of sufficient capacity to store from time to time the cereal products of the farms and leaseholds of complainants aforesaid as well as the products of other neighboring farms.'

"To require the railroad company to grant to the petitioners a location on its right of way for the erection of an elevator, for the specified purpose of storing from time to time the grain of the petitioners and of neighboring farmers, is to compel the railroad company, against its will, to transfer an estate in part of the land which it owns and holds, under its charter, as its private property and for a public use, to an association of private individuals for the purpose of erecting and maintaining a building thereon for storing grain for their own benefit, without reserving any control of the use of such land, or of the building to be erected thereon, to the railroad company for the accommodation of its own business, or for the convenience of the public."

The evidence does not, in our view, show violations of law as alleged in the complaint, which is therefore dismissed.

CHARLES G. FREEMAN

v.

ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY, and ALDACE F. WALKER and JOHN J. McCook, Receivers thereof; CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; KANSAS CITY, FT. SCOTT & MEMPHIS RAILROAD COMPANY; MISSOURI, KANSAS & TEXAS RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY and ALDACE F. WALKER and JOHN J. McCook, Receivers thereof; ST. LOUIS, IRON MOUNTAIN & SOUTHERN RAILWAY COMPANY; ST. LOUIS SOUTHWESTERN RAILWAY COMPANY; SOUTHERN PACIFIC COMPANY; and TEXAS & PACIFIC RAILWAY COMPANY.

Complaint filed November 2, 1895.—Answers filed November 22, December 10, 1895.—Hearing at Chicago, Ill., February 19, 1896.—Brief filed April 4, 1896.—Decided May 28, 1897.

A combination rate of 72 cents on potatoes in carloads from Cadillac, Michigan, via Grand Rapids, Michigan, to Texas common points, made effective since this proceeding was instituted, was a reduction of 5 cents in the rate complained of, and was a substantial satisfaction of the complaint; but it appeared that local rates in force to and from the Mississippi River were charged on said shipments from Cadillac, while defendants, operating west of that river, accepted less than their said charges west of the river on like shipments which originated at Grand Rapids, Michigan, and other points in so-called Detroit-Cleveland territory. *Held*, That without approving defendants' system of shrinking rates, the complaint should be dismissed without prejudice.

Charles G. Freeman for complainant.

Robert Dunlap for Atchison, Topeka & Santa Fé Railroad Company and the Receivers thereof, and St. Louis & San Francisco Railway Company and the Receivers thereof.

Robert Mather for Chicago, Rock Island & Pacific Railroad Company.

John M. Harlan for Southern Pacific Company.

REPORT AND OPINION OF THE COMMISSION.

YEOMANS, Commissioner:

The complainant, a dealer in produce at various points in the State of Michigan, alleges: 1st. That the defendants above named are common carriers engaged in the transportation of passengers and property by railroad "under various arrangements for continuous carriage or shipments between various points in territory hereafter described as Detroit-Cleveland territory in the State of Michigan, and from points north thereof, and various points in the State of Texas mentioned hereafter as Texas common points, and as such common carriers are subject to the Act to Regulate Commerce."

2. That the freight rates as shown by the tariffs issued by the defendants from East St. Louis and St. Louis territory (territory boundary described in tariff) are:

Class	1	2	3	4	5	A	B	C	D	E
Rates	1.80	1.13	.97	.90	.70	.74	.65	.54	.43	.36

The rates from Grand Rapids and points in Detroit-Cleveland territory are:

Class	1	2	3	4	5	A	B	C	D	E
Rates	1.70	1.48	1.24	1.09	.86	.90	.79	.66	.55	.47

3. That complainant is interested particularly in class C rates, and that defendants' roads, while not extending into the territory described by them as Detroit-Cleveland territory, "quote rates from such territory, deducting local rate from Grand Rapids, Michigan, etc., to East St. Louis or Ohio and Mississippi River crossings, and adding the differential, which on class C is 12 cents," but do not include in their tariffs the territory north of the Detroit, Grand Haven & Milwaukee R. R., Durand, Michigan, to Grand Rapids, Michigan, thence by Grand Rapids & Indiana Railroad to Muskegon, Michigan. From points north of this line complainant alleges that said defendants charge the local rates to East St. Louis plus the rate from St. Louis to Texas common points, which practice the complainant claims is in violation of section 1 of the Act to Regulate Commerce, in that said charge is unjust and unreasonable and as such is an unjust discrimination against the territory north of Grand Rapids, and therefore in violation of

section 2, and that such unjust discrimination gives to Grand Rapids and the territory south thereof an undue and unreasonable preference and advantage and is a violation of section 3 of the Act.

The complainant also alleges that the joint rate from Cadillac, Michigan, one of the points from which he is accustomed to ship, "to East St. Louis on 5th class (class C, Western Classification) is 23 cents per 100 lbs. plus the rate East St. Louis to Texas common points 54 cents, making through rate of 77 cents while the rate from Grand Rapids to East St. Louis is 17 cents, thence to Texas common points 49 cents, making through rate from Grand Rapids 66 cents, and a direct discrimination against the territory north of Grand Rapids of 5 cents per 100 lbs. in addition to minimum weight difference of 4,000 lbs. to carload, from Cadillac to East St. Louis." In explanation of the difference in weight the complainant states that "the Michigan railroad lines may give a special local rate from Cadillac to Grand Rapids of 6 cents per 100 lbs. The Grand Rapids shipper can reshipe from Grand Rapids to Texas common points on a rate of 66 cents per 100 lbs. (minimum weight 20,000 lbs.) while the rate quoted to him from Grand Rapids by the Michigan lines is 71 cents per 100 lbs. (minimum weight 24,000 lbs.)." The Michigan lines not being parties to the through rates quoted by the Texas lines, the complainant does not consider them parties to the matters complained of, as the rates quoted by the Texas lines from Michigan points are not authorized by the said Michigan lines.

The complainant further alleges under belief, that favored shippers are enabled to get "class C freight coming from points north of the Detroit-Cleveland territory billed to Texas common points on basis of 49 cents per 100 lbs., the Detroit-Cleveland rate, St. Louis to Texas common points, instead of 54 cents, the St. Louis territory rate."

The complainant further avers that "while the defendants may be able to show that they should receive less compensation on Texas business when the shipments originate in Detroit-Cleveland territory than they should on business originating in St. Louis territory, that they cannot show any legitimate reason why they should receive more compensation on business north of Detroit-Cleveland territory than they receive when shipments origi-

nate in such territory, and that any charges over and above the rate given to Detroit-Cleveland territory on business originating north thereof" are unreasonable, unjust and a direct discrimination provided against in the Act to Regulate Commerce.

The prayer of the complainant is "that the defendants may be required to answer the charges herein, and that after due hearing and investigation an order be made commanding the defendants to cease and desist from such violations of the Act to Regulate Commerce."

The petition originally embraced a claim for reparation, which was subsequently abandoned at the hearing and the petition amended accordingly.

The defendants deny that the rates made the subject-matter of this complaint are unreasonable, unjust or discriminating or in violation of any of the provisions of either sections 1, 2, or 3 of the Act to Regulate Commerce. Complainant's allegation that favored shippers are able to get class "C" freight coming from points north of the Detroit-Cleveland territory, billed to Texas common points at Detroit-Cleveland rate, is denied.

It is admitted that defendants quote rates from Detroit-Cleveland territory to points in Texas, and that they do not include in their tariffs territory north of Chicago & Grand Trunk Railway, Port Huron to Durand, Michigan; Detroit, Grand Haven & Milwaukee Railroad, Durand to Grand Rapids, Michigan; thence Grand Rapids & Indiana Railroad to Muskegon, Michigan; and it is also admitted that shipments from points north of this line to Texas points, owing to absence of through rates, take a rate which is the sum of the locals; but it is denied that either the maintenance of such system of through rates between points in Detroit-Cleveland territory and Texas common points, or the failure to put in force through rates from points north of Detroit-Cleveland territory to Texas common points, constitutes a violation of any of the provisions of the Act to Regulate Commerce. The following is a summary of the material parts of defendants' answers:

The separate answers of the Chicago, Rock Island & Pacific Railway Company; the Missouri, Kansas & Texas Railway Company; the St. Louis Southwestern Railway Company; Allice F. Walker and John J. McCook, as receivers of the Atch-

ison, Topeka & Santa Fé Railroad Company and also as receivers of the St. Louis & San Francisco Railway Company, are substantially similar in matter and in form. They deny that they are common carriers engaged in transportation of passengers and property by railroad *under any arrangement for continuous carriage or shipment* between points in the territory described as Detroit-Cleveland territory in the state of Michigan, or points north thereof, and various points in the State of Texas.

They aver that the rates from Detroit-Cleveland territory and from territory north thereof to East St. Louis or Ohio and Mississippi River crossings are made and controlled by the railways forming the Central Traffic Association, of which no one of them is a member; that the lines composing the Central Traffic Association are none of them parties to the through rates quoted by these respondents from Detroit-Cleveland territory to Texas common points, which through rates are made by adding the rates of the Central Traffic Association lines from points in Detroit-Cleveland territory, to East St. Louis, and the local rate of these respondents from East St. Louis to the Texas points of shipment, except in instances where combinations of local rates by other gate-ways, such as Louisville, Evansville, Cincinnati, etc., would make a lower through rate from some points within the Detroit-Cleveland territory. In such cases the defendants aforesaid state, in order to participate in the business which would otherwise seek a gate-way affording the lower rate, they and the other defendants have equalized their through rates *via* all gate-ways, and as the Central Traffic Association lines are not parties to the through rates quoted by respondents, this equalization is necessarily affected by "shrinking" the defendants' local rate from East St. Louis or Mississippi River crossings. This equalization, they aver, reduced their proportion of the through rate, as to shipments under class "C" from Grand Rapids to Texas common points, from fifty-four cents (54 cents), their local rate from East St. Louis to Texas points, to forty-nine cents (49 cents) but as this forty-nine cents (49 cents) represents their proportion of a through rate, they aver that the acceptance of such proportion by them furnishes no ground of complaint to shippers from points north of Detroit-Cleveland territory, from which points such through rates do not extend. It is true, they state, that the general rule

that through rates quoted by them from Detroit-Cleveland territory to Texas points are the sums of the locals, subject to the equalization hereinbefore explained, is subject to still further modification in some particulars and with reference to certain classes of goods, by the fact that the "Official Classification" prevails upon the lines composing the Central Traffic Association, and the "Western Classification" on the lines of the respondents, but they aver that whatever modification of such general rule is affected in the change from "Official Classification" to "Western Classification" furnishes no ground for complaint to said complainant.

The said defendants further aver that they are not parties to and are not in any way responsible for the rates existing from Detroit-Cleveland territory or from the territory north thereof to East St. Louis or Ohio and Mississippi River crossings, or for the local rates existing from Cadillac or other points north of Detroit-Cleveland territory to Grand Rapids; and they further say that they have no knowledge or information as to whether or not such rates affect the shipments of said complainant to Texas points in the manner alleged in said complaint; but they aver that if such rates do so affect such shipments they are not responsible therefor.

The Texas & Pacific Railway answering says that the rate from said Detroit-Cleveland territory to the Texas common-points territory is an agreed differential from said Detroit-Cleveland territory to St. Louis, and the common-point-territory rate from St. Louis to common points in Texas; that this rate is just and reasonable; that the agreed differential from Grand Rapids, Michigan, or from any other point in the Detroit-Cleveland territory, to St. Louis or East St. Louis, is reasonable and just and does not in any instance exceed or equal the local rate from points in said territory to St. Louis, nor does the common-point-territory rate from St. Louis to points in Texas exceed or equal the sums of the locals to said points; that Cadillac, Michigan, is situated 98 miles north of the Detroit-Cleveland territory, and 98 miles north of Grand Rapids, Michigan; that the Texas & Pacific Railway Company has no joint tariffs in effect with any road or roads that run from Cadillac, Michigan, to St. Louis, and from St. Louis to common-point territory in Texas, so that complainant, if he desires to ship from Cadillac to any point in the common-point-territory in Texas is required to pay the sum of the locals from

Cadillac to St. Louis and the common-point rate from St. Louis to places in the common-point territory in Texas; that its tariffs and rates in effect from the Detroit-Cleveland territory to Texas common-point territory are reasonable and just; that the differentials hereinbefore specified are reasonable and just, and do not discriminate against any place, person or locality; that it knows nothing whatsoever about the weight difference of 4,000 lbs. per carload; that it charges on a minimum weight of 20,000 lbs. per car, regardless of territory or place. It avers that it would be unjust and unreasonable to require the Texas & Pacific Railway Company with connecting carriers to transport goods from Cadillac, Michigan, to Texas common-point territory at the same rate that they do the same commodity from Grand Rapids, Michigan; that if the rates were based on the sums of the locals from the two points, the rate from Cadillac would exceed the rate from Grand Rapids; that if the joint tariffs were in effect between Cadillac and Texas common-point territory the rate would exceed the rate from Grand Rapids, and the rates in effect from Grand Rapids or the Detroit-Cleveland territory are reasonable and just and do not in any particular exceed the sums of the local.

The Kansas City, Ft. Scott & Memphis Railroad Company answering avers, after a denial of any violation of the sections 1, 2 or 3 of the Act, that any freight in the course of transportation from the northern part of the State of Michigan to Texas points, if delivered to it at all for transportation, "as is unlikely," would be received at Memphis, Tennessee, to be transported on its line, a distance of about 60 miles, to a connection with the line of the St. Louis Southwestern Railway Company, and denies that it has ever received for transportation over its line any property belonging or consigned to or from the complainant. The defendant further avers that the rates complained of are those published in the tariffs issued by the Southwestern Traffic Association; that said rates are made by the members of said Association, and are, as this defendant is advised and understands, intended to include all territory from or to which freight transported over the line of any member of said Association is likely to be consigned; and this defendant further avers that it has always been and is now ready and willing to make a reasonable and undiscriminating rate

for the transportation of any freight between Cadillac, Michigan, referred to in said complaint, and any point in Texas, which in course of transportation would pass over its line; and it believes that every member of said Southwestern Traffic Association is likewise willing to do so; but neither it, nor so far as it is informed, any member of said Association has been asked to put in effect or quote any rate between such points.

The joint answer of the Missouri Pacific Railway Company and the St. Louis, Iron Mountain & Southern Railway Company denies that they are common carriers in the transportation of passengers and property by railroad, under any arrangement for continuous carriage or shipment between points named, but admits that the rates as enumerated in the complaint are substantially correct, and are made by adding to the established rates from St. Louis and East St. Louis as set forth in the complaint, a scale of differentials beginning with 40 cents per 100 lbs. 1st class, and ending with 11 cents per 100 lbs. on class E, said differentials being arrived at by taking the average local rate to East St. Louis from all the important shipping points within the Detroit-Cleveland territory, in the division of which rates between these respondents' lines and those located east of the Mississippi River the lines east are accorded their local rates, according to their tariffs from time to time published, the lines south of St. Louis taking the remainder. The said defendants also state that the rates to Texas points, from stations located in the State of Michigan, north of the northern boundary of said Detroit-Cleveland territory, would be the lowest combination of locals that could be ascertained; that is to say, the local to East St. Louis plus the local thence to Texas; but they deny that such adjustment is in violation of the provisions of the Act to Regulate Commerce.

They further allege that the rates on produce, carloads, (5th class east of the Mississippi River and class C west) from Cadillac, Michigan, and Grand Rapids, Michigan, to Texas common points are found in the following manner:

"The rate from East St. Louis to Texas common points is 54 cents per 100 lbs. To ascertain the rate from Cadillac to Texas common points add 23 cents per 100 lbs., the local from Cadillac to East St. Louis. To ascertain the rate from Grand Rapids, Michigan, to Texas common points add 12 cents per 100 lbs., the

class C differential. The result is a total from Cadillac, 77 cents, and from Grand Rapids, 66 cents, a differential of 11 cents per 100 lbs.,” which difference these respondents aver is neither unjustly discriminating nor otherwise in violation of the Act.

These defendants further answering deny that they have in effect a less rate from East St. Louis to Texas common points, on produce originating at Grand Rapids than on produce originating at Cadillac, but aver that in the division of through rates from Grand Rapids the respondent companies accept 5 cents per 100 lbs. less than the regular rate East St. Louis to Texas common points; and admit that there is, as alleged by complainant, a difference of 4,000 lbs. in the classification, which difference is caused by the minimum under the classification in effect west of the Mississippi River being 20,000 lbs., while that under the classification adopted by lines east of the Mississippi River is 24,000, but they deny that this difference is unjustly discriminating or otherwise in violation of the Act to Regulate Commerce. They further say that complainant has made no application to them to have the northern boundary line of the Detroit-Cleveland territory extended to include Cadillac, Michigan, nor has he complained to them “of any discrimination in the rates or classification as alleged in his complaint; nor has he heretofore shown any combination of rates to and from Grand Rapids or any other point that would make a less through rate than hereinbefore recited.” They also further deny that they receive more compensation on business originating north of the Detroit-Cleveland territory than they receive when shipments originate in such territory, except in cases where, as already set forth, the differentials do not equal the local rates from points in the Detroit-Cleveland territory to St. Louis and East St. Louis, thereby necessitating a shrinkage of the rate from St. Louis and East St. Louis to Texas common points in amount equal to the difference between said differentials and the local rates. This practice these defendants declare is not in violation of the Act, “as will appear from a consideration of what would be the effect of abolishing the so-called Detroit-Cleveland territory and making rates on a strict combination of locals to and from East St. Louis. Under such conditions Cadillac would still take a higher rate than Grand Rapids by 6 cents per 100 lbs., because the local rate from that

point to East St. Louis is 23 cents per 100 lbs. while the local rate from Grand Rapids to East St. Louis is 17 cents per 100 lbs."

The Southern Pacific Company in substance denies that it is a common carrier engaged in transportation of property by railroad under any arrangement for a continuous carriage or shipment between the points named, except so far as the publication by it of tariffs of through rates from Detroit-Cleveland territory, or points north thereof, to Texas points, may constitute such an arrangement; that the rates so established are based approximately on the lowest combination of locals, and the defendant obligates itself to protect the same; that the so-called differential of 12 cents on class "C," referred to in the complaint, is simply the difference resulting through St. Louis as against other combinations from this territory through other Mississippi River crossings; that initial lines in said territory are authorized to sign through bills of lading to Texas points, which are honored by this defendant, but it avers that it does not itself receive or deliver freights shipped thereunder, being only an intermediate carrier. It assigns the same reason as do the other defendants for not including in its tariffs the territory north of the Detroit-Cleveland territory, and avers that it has no control or influence over the rates or minimum weights made by the lines of railroad from Cadillac or that section to East St. Louis, and it has no power to control the through rates from that point or to regulate the minimum weight to be charged; that to the best of its knowledge and belief complainant has never brought the question of rates to Cadillac to the attention of any of the defendants; that it does not know whether a lower combination can be made from Grand Rapids, as alleged in the complaint, and states, if such be the fact, it is willing to so amend its tariffs, provided the initial lines are willing to handle the business *via* Grand Rapids, which would be necessary to enable the defendants to protect the combination which it is alleged can be made through that point.

At the hearing complainant failed to offer any evidence whatever in support of his charge, made upon his belief only, that "favored shippers" are able to get class C freight coming from points north of the Detroit-Cleveland territory billed to Texas common points at the Detroit-Cleveland rate.

In the matter of alleged discrimination resulting from the diff-

erence in the minimum carload weights, it appears that the minimum weight on defendant's lines is 20,000 pounds "regardless of origin" and the greater minimum of 24,000 pounds is in force on the lines east of the Mississippi River. These lines are not made parties to this proceeding, and the testimony as to this branch of the case is extremely vague and indefinite.

FACTS AND CONCLUSIONS.

1st. The complainant, a resident of Pontiac, Michigan, is a dealer in produce, largely potatoes, and ships from various points in the State of Michigan, but cites in his complaint but one point, Cadillac.

2d. The defendant companies are common carriers engaged in interstate commerce. They are members of the Southwestern Traffic Association and operate lines west of the Mississippi River or south of the Ohio River to Texas points. And none of them own or operate lines into the territory known and described as the Detroit-Cleveland territory, or into any territory in which complainant carries on his business.

3d. The Detroit-Cleveland territory is described as follows:

"That territory, beginning at a point just north of New Buffalo, Mich., thence north and east of the following line: North of the Michigan Central R. R. to a point just north and east of Niles, Mich., thence north and east of the C. C. C. & St. L. Ry., east of Granger and Elkhart, Ind., to a point just east of Goshen, Ind., thence east of the C. C. C. & St. L. Ry. to a point just east of Milford Junction, Ind., thence north of the B. & O. R. R. to a point just north and east of Auburn Junction, Ind.; thence east of the L. S. & M. S. Ry. to a point just north and east of Ft. Wayne, Ind.; thence north of the N. Y. C. & St. L. R. R. to a point just north and east of Latty, O.; thence east of the C. J. & M. Ry. to a point just north and east of Van Wert, O.; thence north of the P. Ft. W. & C. Ry., east of Delphos, to a point just north of Lima, O.; thence north of the Chicago & Erie R. R. to a point just east and north of Kenton, O.; thence east of the C. C. C. & St. L. Ry., east of Bellefontaine and Urbana, to a point just east of Springfield, O.; thence east of the Ohio Southern R. R. to a point just east of Washington, O.; thence east of the C. H. & D. R. R. to a point east of Chillicothe; thence east of the Scioto Valley Ry., east of Waverly, to a point just east of Portsmouth, O.; thence on the north bank of the Ohio River to and including Pomeroy, O.; thence on and west

and south of the following line: From Pomeroy, through Athens to New Lexington, O., *via* the T. & O. C. Ry.; thence *via* the C. & M. V. Ry. to Zanesville, O.; thence *via* the C. C. & S. R. R. to Coshocton, O.; thence *via* the P. C. C. & St. L. R. R., through New Comerstown to Urichsville, O.; thence *via* the C. L. & W. R. R. to Canal Dover, O.; thence *via* the Penn. Co. to Valley Junction, O.; thence *via* the Valley Ry. to Canton, O.; thence *via* the Penn. Co., through Alliance, Ravenna, Newberg and Woodland, to Cleveland, O.; thence *via* the south and west shore of Lake Erie and Detroit River to Detroit, Mich.; thence *via* the west shore of Lake St. Clair and St. Clair River to Port Huron, Mich.; thence *via* the C. & G. T. Ry. to Durand, Mich.; thence *via* the D. G. H. & M. R. R. to Grand Rapids, Mich.; thence *via* the G. R. & I. R. R. to Muskegon, Mich.; thence *via* the eastern shore of Lake Michigan to a point just north of New Buffalo, Mich."

4th. Cadillac, Michigan, the point of shipment named in the complaint, is located 98 miles north of Grand Rapids, Michigan, on the line of the Grand Rapids & Indiana Railroad, and 98 miles north of the Detroit-Cleveland territory, Grand Rapids being on the northern boundary of that territory. Cadillac is also on the line of the Ann Arbor Railroad, but shipments destined to Texas points would find their natural outlet from Cadillac by way of the Grand Rapids & Indiana Railroad to Grand Rapids.

5th. The territory of the Central Traffic Association, now known as the Central Freight Association, covers the Detroit-Cleveland territory, and the Southwestern Traffic Association controls shipments from East St. Louis to Texas common points. The "Official Classification" prevails upon the lines embraced in the first-named association and the "Western Classification" on the lines of the defendants. Under the "Official Classification" potatoes are 5th class and under the "Western Classification" class "C."

6th. The carriers composing the two aboved-named associations have no joint tariffs with each other into their respective territories. The defendants as members of Southwestern Traffic Association publish through rates from Mississippi River points and certain territory west thereof to Texas points, and also publish a tariff quoting rates from Detroit-Cleveland territory, which is within the territory of the Central Traffic Association, to Texas points. This tariff is published for the information of the

public only, and is not a joint tariff, as the lines east of the Mississippi River are not parties to the through rates so quoted, but charge their local rates to East St. Louis, the roads comprising the Southwestern Traffic Association protecting the through rates published by the Association by accepting the remainder of the published through rate after allowing the lines east of the Mississippi River their local rate. This tariff quotes no rates north of the northern boundary limits of the Detroit-Cleveland territory. The method employed by the Southwestern Traffic Association in preparing the tariff is better explained in the language of Mr. Robert Mather, counsel for the Chicago, Rock Island & Pacific Railway Company, and is as follows:

"That tariff purports to quote rates from certain territory east of the Mississippi River and north of the Ohio River which is within the territory of what is known as the Central Traffic Association. In other words, the Texas lines, defendants here, name a rate from a point beyond their own line to common points in Texas. In determining from what points they will name those rates on certain commodities or all classes of commodities, their judgment has been largely based on the amount of business that comes to Texas points from the territory covered by their rates, and on that basis they have confined the points from which they quote rates outside of their territory to Texas common points to what is known as the Detroit-Cleveland territory, which lies south of a line described generally from Port Huron, Michigan, to Muskegon, Michigan; to all points north of that line, on which line Grand Rapids is situated, this joint tariff quotes no rates at all. Of course, in quoting through rates from a large territory, as is the universal custom, a blanket or group rate is adopted and the same rate is given to a great many points within the Detroit-Cleveland territory, from those points to Texas common points. What those rates shall be must be determined by the lowest combination of locals that the traffic could be carried on. If the combination of locals by way of East St. Louis to Texas common points would make the lowest rate, that is the rate adopted for that locality. If the traffic could find its way into Texas through some other gateway on the boundary of these two associations at the Ohio or Mississippi River at a less rate than the combination of locals by the St. Louis gateway, that would control the territory. In the operation of this scheme, the lines in the Southwestern Association have quoted rates on the articles that Mr. Freeman is interested in in this way. The local rate from St. Louis to Texas common points is 54 cents. That would be the rate that the carrier carrying from East St. Louis to Texas common points

would be entitled to on a local shipment. The rate from Grand Rapids to East St. Louis over the lines in the Central Traffic Association not parties to this alleged joint rate would be 17 cents, but either from Grand Rapids or from other points in the territory these commodities could find their way, by reason of rates established not by these defendants, but members of the Central Traffic Association at a rate 5 cents less than that, and in order to control the traffic, to equalize the distribution of the products of this locality, the same rate is made by way of all the gateways, and what is known as a differential rate is applied to Grand Rapids and other like situated points in Detroit-Cleveland territory. So the Texas lines carry for a through rate to Texas common points of 66 cents. Grand Rapids is the limit on the north of the territory in which these rates are quoted. The complainant in this case operates at a station north of that and of course through rates are not quoted to his territory, and when he ships he is compelled to ship at terms which his initial line, to which he delivers his goods, dictates. They have no arrangement with us for a through rate. They therefore charge him their local rate to a point where they deliver to the southwestern line, and we carry from that point on our local rate. That is the custom where no joint through rates are agreed upon."

7th. The 5th-class (Class C, Western Classification) rate, Grand Rapids to Texas common points, made in the manner described above, is 66 cents per 100 lbs., the 12 cent differential to East St. Louis and the published rate 54 cents, East St. Louis to Texas common points. As the lines east of the Mississippi River are not parties to the through rate so published by the Southwestern Traffic Association, they receive their full local rate. The division of the through rate of 66 cents, therefore, was shown to be as follows:

Grand Rapids to East St. Louis.....	17 cents per 100 lbs.
East St. L. to Tex. Com. Pts.....	49 " " " "
Total through rate.....	66 cents per 100 lbs.

The defendants, as is shown, allow the lines east of the Mississippi River their local rate, and accept the balance of the through rate published in their tariffs as their proportion.

8th. At the time complaint was filed the 5th-class (class "C") rate, Cadillac to East St. Louis, was 23 cents per 100 lbs., and this added to the published rate, East St. Louis to Texas common points, 54 cents per 100 lbs., made a through rate of 77 cents. It appears from the testimony that subsequently a through rate of

75 cents was made from this point by adding the local 5th-class rate, 9 cents from Cadillac to Grand Rapids, to the established rate of 66 cents, Grand Rapids to Texas common points, which rate was published by the Southwestern Traffic Association. This rate gave complainant the benefit of the 12 cent differential and reduced by 2 cents the alleged discrimination of 5 cents per 100 lbs. The remaining 3 cents of the alleged discrimination, it is shown, was removed by the Grand Rapids & Indiana Railroad, which road gave a "special local" rate of 6 cents, Cadillac to Grand Rapids. And by rebilling at Grand Rapids at the 66-cent rate, the complainant secured a rate of 72 cents per 100 lbs. on potatoes, Cadillac to Texas common points.

By the 72-cent rate obtained by complainant, Cadillac to Texas common points, made in the manner above described, the real purpose of the complaint seems to have been fulfilled, and the ground of complaint removed. And in the division of the 66-cent rate, Grand Rapids to East St. Louis, on shipments from Cadillac, rebilled from Grand Rapids, the defendants received as their proportion 49 cents, instead of the 54 cents when shipments were billed direct from Cadillac. And it is also shown that the complainant admitted in evidence that he had in fact what he asked for in his petition, and further admitted that if he could have a rate 6 cents higher than the Grand Rapids rate, he would be satisfied. The Grand Rapids rate was shown to be 66 cents and the Cadillac rate 72 cents, or 6 cents higher than the Grand Rapids rate.

The complainant's claim for reparation was withdrawn; and there was no evidence offered in support of the charge, made upon belief only, that "favored shippers are able to get 'class C' freight coming from points north of Detroit-Cleveland territory billed to Texas common points" at the Detroit-Cleveland rate. The testimony upon the question of minimum carload weights was of a vague and indefinite character, and the railroad companies over whose lines the higher minimum was in force, were not made parties to the proceeding. Consequently the only point for consideration is complainant's demand for a rate on potatoes, Cadillac to Texas common points, 5 cents lower than that charged at the time complaint was filed. This the complainant succeeded in obtaining by the aid of the "special local" rate of 6 cents, Cadillac to

Grand Rapids, and rebilling at Grand Rapids to Texas common points at the Grand Rapids rate, 66 cents, making the through rate 72 cents, 5 cents less than the rate in force when complaint was filed, and only 6 cents higher than the Grand Rapids rate. That this gave the complainant the relief he in fact asked for is practically admitted by his evidence.

Without approving the system of "shrinking" rates as disclosed in this proceeding, our conclusion is that the complaint be dismissed without prejudice.

LOWER RATES ON EX-LAKE GRAIN IN CARGO LOTS THAN ON SUCH
GRAIN IN CARLOADS.

PAINE BROTHERS & COMPANY

v.

LEHIGH VALLEY RAILROAD COMPANY; PHILADELPHIA
& READING RAILROAD COMPANY and JOSEPH S. HARRIS, ED-
WARD M. PAXSON and JOHN LOWBER WELSH, Receivers
thereof; CENTRAL RAILROAD COMPANY OF NEW JERSEY;
WILMINGTON & NORTHERN RAILROAD COMPANY; NEW YORK,
SUSQUEHANNA & WESTERN RAILROAD COMPANY; ERIE RAIL-
ROAD COMPANY; DELAWARE & HUDSON CANAL COMPANY;
NEW ENGLAND RAILROAD COMPANY; FITCHBURG RAILROAD
COMPANY; FALL BROOK RAILWAY COMPANY; DELAWARE,
LACKAWANNA & WESTERN RAILROAD COMPANY; CENTRAL
VERMONT RAILROAD COMPANY and E. C. SMITH and CHAS.
M. HAYS, Receivers thereof; NEW YORK CENTRAL & HUDSON
RIVER RAILROAD COMPANY.

(No. 451.)

Decided June 24, 1897.

Defendants established rates on "ex-lake" grain from Buffalo, N. Y., to New York and Philadelphia, and points taking New York and Philadelphia rates, which were lower on so-called cargo lots of 10,000 bushels of oats and 8,000 bushels of other grain than on shipments of oats and such other grain in carload lots, but afterwards modified their tariffs so that, with few exceptions, the lower rates for cargo lots were restricted to export shipments. Such modification of tariffs removed the principal grievance complained of, and no evidence was offered concerning rates on shipments of grain for export. *Held*, That the principle involved under lower rates for cargo or trainload quantities than for carload shipments, whether for export or domestic use, violates the rule of equality and tends to defeat its just and wholesome purpose; and such purpose is not fully accomplished by making all cargo shippers pay the same rate and charging all carload shippers alike. That defendants should reconsider their grain tariffs with a view to amendment thereof in accordance with the opinion herein expressed, and that the case be held open for such further action as may be deemed appropriate.

Cassius M. Paine, for complainant.

Francis I. Gowen, for Lehigh Valley R. R. Co.

John Stirlen, for Chicago & Erie R. R. Co.

Frank Loomis and Winston & Meagher, for N. Y. C. & H. R. R. R. Co.

David Willcox, for Del. & Hud. C. Co.

E. G. Bradford, for Wilmington & Northern R. Co.

J. D. Campbell, for Phila. & Reading R. Co.

G. M. Cumming, for Erie R. Co.

Daniel Beach, for Fall Brook R. Co.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, Commissioner :

The complainants in this case allege that they are grain dealers at Milwaukee, Wis., engaged in shipping grain and feed from Milwaukee and other western points to Philadelphia, New York City, and other points in the Middle and Eastern States, in competition with other dealers and shippers; that the defendants are common carriers of such traffic between said interstate points; that prior to March, 1896, the defendants, in the all-rail transportation of wheat, corn, rye, barley and oats from said western points to Philadelphia and the other points named above, charged and collected the same rates on train loads or "cargo" lots as on carload shipments; but that they, in March, 1896, put into effect on such grain coming to Buffalo by the great lakes and destined for Philadelphia, New York city, and other points known as "Philadelphia and New York rate points," and to other eastern points, lower rates for cargo lots of 8,000 bushels or over of wheat, corn, rye and barley, and cargo lots of 10,000 bushels or over of oats, than for lots of less than said specified number of bushels, such rates being as follows: Wheat, 8,000 or more bushels, 4 cents per bushel; less quantity, $5\frac{1}{4}$ cents per bushel; corn, rye and barley, 8,000 or more bushels, $3\frac{3}{4}$ cents per bushel; less quantity, 5 cents per bushel; oats, 10,000 or more bushels, 3 cents per bushel; less quantity, 4 cents per bushel; that said lower rates are expressly limited in the tariffs to "grain ex-lake at and east of Buffalo" in quantities above specified, "forwarded at one time by one shipper to one consignee and one destination and for one station delivery at such destination;" that such rates

give the larger dealer a monopoly of the business, and are unreasonable and unjust, and subject complainants to unreasonable prejudice and disadvantage, and give undue preference and advantage to shippers of grain in large lots under said tariffs, in violation of sections 1, 2 and 3 of the Act to Regulate Commerce.

Several of the defendants, not initial carriers, answered that they had no voice in fixing the rates complained of, and that the same were determined by the roads on which the traffic originated. The answers of the initial carriers admit that the rates are correctly stated in the complaint, but deny that such rates necessarily result in a monopoly to larger shippers, or unduly prejudice complainants' business, or violate any provision of the Act. These defendants further allege that, in thus fixing the minimum quantity of bushels accorded the lower rates established as aforesaid at and east of Buffalo, they followed a practice of long standing which recognizes a lake shipment or ex-lake shipment as consisting of not less than 8,000 bushels of wheat, corn, rye, and barley, and not less than 10,000 bushels of oats; that these quantities (known as cargo lots) represent the minimum bin capacity of lake vessels and of grain elevators, and the minimum quantity for which a lake bill of lading will be issued by any vessel; that there is very active canal competition for the forwarding of lake grain eastward from Buffalo in cargo lots only, and to meet this competition it is necessary to make a lower eastward rate for cargo lots than for single carload shipments; that the circumstances and conditions governing the movement and handling of lake and ex-lake grain in cargo lots and in single carload shipments are dissimilar in many respects, as, for instance: A cargo quantity is forwarded at one time by one shipper to one consignee at one station at destination; such quantity can be loaded to the full capacity of the cars; only one bill of lading is required for the several cars containing the cargo lot, and the railroad company's responsibility ceases with the delivery of the one train load at one time and place; whereas, for single carload shipments, of which the minimum weight is 24,000 pounds per car, more cars would be required to transport the same quantity, numerous bills of lading might be required and numerous transactions with elevators made necessary, all of which increase the carrier's responsibility and the cost of performing the service.

At the hearing of the case, Cassius M. Paine, a member of the complaining firm, was the only witness who testified, and no evidence has been offered on behalf of the defendants. It appears from Mr. Paine's testimony that complainant's business of shipping grain from Buffalo in carload lots to points taking Philadelphia rates had been practically destroyed by the lower rates on ex-lake grain from Buffalo in so-called cargo lots to the same points, but that at New England points, to which the cargo rates did not apply, complainants' carload grain trade had remained unaffected.

Towards the close of the testimony, counsel for the Lehigh Valley Railroad Company stated the willingness of that carrier to discontinue the cargo lot rates to points between Buffalo and the seaboard, if that would be satisfactory to complainants, but declined to disturb such rates to the seaboard. The complainants insisted that defendants should abolish cargo rates on all grain except that destined to the seaboard for export, and intimated that if this were done they would be satisfied; but no offer or proposition to that effect was then made by the carriers. Subsequently, however, the Erie, the Delaware, Lackawanna & Western and the Lehigh Valley Railroad Companies filed with the Commission tariffs on grain ex-lake, for the season of 1897, on cargo lots in the number of bushels above specified, as follows:

To New York, for export only:

Wheat.....	5	cents	per	bushel.
Corn and Rye.....	4½	"	"	"
Barley.....	4½	"	"	"
Oats.....	3½	"	"	"

To Philadelphia, for export only:

Wheat.....	4	cents	per	bushel.
Corn and Rye.....	3½	"	"	"
Barley.....	3½	"	"	"
Oats.....	3	"	"	"

The foregoing rates to New York for export also apply on ex-lake grain to New York in carload lots; also to carload shipments to nearly all interior points taking New York rates; while the rates on grain ex-lake in carloads from Buffalo to Philadelphia, for local delivery and, with few exceptions, for interior points taking Philadelphia rates, are the same as the rates given above

to New York. Boston export rates on grain are the same as those to New York. The carload rates per bushel to Boston, for local delivery are: Wheat, 8 cents; corn and rye, $7\frac{1}{2}$ cents; barley, $7\frac{1}{4}$ cents; oats, $4\frac{1}{4}$ cents.

Rates to Albany, N. Y., and Albany rate points *via* the Erie and Lackawanna are, in cargo lots, the same from Buffalo as rates to New York above specified. In carload lots to Albany rate points, the rates by those lines, reduced to rates per bushel, are: Wheat, 5.40 cents; corn and rye, 5.04 cents; barley, 4.32 cents; oats, 2.88 cents. Under such rates, carload wheat to Albany takes a rate $\frac{1}{10}$ of a cent *higher* than cargo wheat, while carload oats is carried at about $\frac{1}{8}$ of a cent a bushel *less* than is charged on cargo oats.

The Lehigh Valley tariffs do not name Albany or Albany rate points. The New York Central & Hudson River Railroad Company has not filed any tariffs on grain ex-lake for the season of 1897.

The action of defendants in establishing tariffs for the present season, which restrict the lower cargo-lot rates to export shipments, is understood to remove the principal grievance complained of in this case. The complaint, however, broadly alleges that the less rate for cargo lots, on shipments of ex-lake grain to seaboard points, unlawfully discriminates against shippers of like grain in carloads, and this allegation covers rates on export as well as domestic shipments to the same port. A difference of 1 cent per bushel on wheat and corn and $\frac{1}{2}$ cent per bushel on barley and oats equals, according to the standard weights per bushel, a difference per 100 pounds of about $1\frac{1}{8}$ cents on wheat, $1\frac{1}{4}$ cents on corn, $1\frac{1}{2}$ cents on oats, and 1 cent on barley; and the so-called cargo lots of 8,000 and 10,000 bushels apparently require about ten cars of average capacity to effect the transportation. The grain trade is well known to be conducted on profit margins sometimes less than 1 cent per bushel, and transportation rates on cargo lots or train loads, lower to the extent of from 1 to $1\frac{1}{8}$ cents per 100 pounds than those applied to carload shipments, even if strictly confined to export business, must tend very strongly to throw that business into the hands of the larger dealers exclusively. While no evidence has been presented on this branch of the case, it is difficult to see, if the cargo rates

formerly in force to interior points taking seaboard rates were destructive of complainants' carload business to such points, how the effect of lower cargo rates on export grain can be much less burdensome to those who handle grain for export in carload quantities. Another objection to lower cargo or train-load rates on export grain is the opportunity thereby afforded for manipulations at seaboard points, whereby the favored dealer in grain for domestic consumption may, by one device or another, secure the export rate on such grain, while his more honest or less fortunate competitor is required to pay the higher and largely prohibitory rate. But conceding that lower rates on export than on domestic grain may be properly allowed, we perceive no sufficient reason for different rates on carload than on cargo or train load shipments, whether grain is carried for export or for domestic use. The principle involved in such a distinction violates the rule of equality and tends to defeat its just and wholesome purpose. That purpose is not fully accomplished if one scale of charges is applied to cargo shipments and a higher rate is imposed for single carloads, even though all cargo shippers pay the same and all carload shippers are charged alike.

Inasmuch, however, as this question does not seem to require final determination at this time, the Commission will only recommend that the carriers reconsider these export and domestic tariffs, with the view to their amendment in accordance with the opinion here expressed. No formal order will now be entered, but the case will be held for such future action as, upon the application of any interested party and further investigation by the Commission, may appear to be appropriate.

BREWER & HANLEITER

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY;
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY;
WESTERN & ATLANTIC RAILROAD COMPANY; CENTRAL OF
GEORGIA RAILWAY COMPANY.

(No. 467.)

Decided June 29, 1897.

1. Rates charged by defendants for the transportation of freight articles from Cincinnati, Ohio, and Louisville, Ky., to Griffin, Ga., are materially higher than their rates on like traffic carried from Cincinnati and Louisville through Griffin to Macon, Ga., and Griffin and Macon are competing localities. *Held*, Upon the facts, that Griffin is entitled to Macon rates from Louisville and Cincinnati, and that charging any higher rate to Griffin is an unjust discrimination under section 8 of the Act to Regulate Commerce.
2. Water competition, to justify higher shorter-distance charges under the 4th section, must be actual competition for the transportation involved, and such as to dictate the rate by rail. A railroad rate so low as to drive water transportation out of existence cannot be justified by showing the possibility of water competition; the law permits railroads to *meet*, not to *extinguish*, such competition.
3. Competition between markets, or between carriers subject to the regulating statute, does not create such dissimilarity of circumstances and conditions as will justify carriers in charging more for the short than for the long haul, under the 4th section, without an order of the Commission.
4. Defendants are engaged in competition with other carriers by railroad in the transportation of freight to both Griffin and Macon, Ga., but the defendants and their competitors make greatly lower rates from Louisville and Cincinnati for the longer distance to Macon than for the shorter distance to Griffin, which is an intermediate point between Atlanta and Macon. While the rates to Atlanta and Macon are substantially the same, such rates to Griffin are the rates to Atlanta added to local rates from

Atlanta to Griffin. Rates for the transportation of freight from New York and other eastern points to Griffin and Macon are practically the same. Although there is railroad competition for traffic to Griffin as well as to Macon, the carriers from Louisville and Cincinnati, while making low rates on account of such competition to Macon, refuse to establish like rates for Griffin. *Held*, That if there can be exceptional instances in which competition between carriers subject to the Act may create the dissimilarity of circumstances and conditions under the 4th section, this case, where such competition is shown at both the shorter and longer distance points, is not one of them.

- 5 Railroad companies have the right to earn a proper return upon some investment; just what has not been very definitely determined; but in earning such return they must operate their properties in accordance with the provisions of the statute forbidding discrimination between localities and charging more for the short than for the long haul.

W. H. Brewer for complainants.

Edward Baxter for defendants.

REPORT AND OPINION OF THE COMMISSION.

FROUTY, Commissioner :

The complainants are wholesale and retail grocers in the city of Griffin, Ga. The defendants are common carriers by railroad, engaged in the transportation of interstate traffic from Cincinnati, Ohio, and Louisville, Ky., to Griffin and Macon, Ga. This transportation is conducted from both Cincinnati and Louisville over the line of the defendant, the Louisville & Nashville Railroad Company, to Nashville, Tenn.; from Nashville to Chattanooga over the Nashville, Chattanooga & St. Louis Railway; from Chattanooga to Atlanta, Ga., over the Western & Atlantic Railroad; and from Atlanta to Macon over the Central of Georgia Railway. Griffin is situated on the line of the Central of Georgia Railway between Atlanta upon the north and Macon upon the south. The various defendants maintain, as above, through arrangements under which merchandise is transported by continuous shipment from Cincinnati and Louisville to both Griffin and Macon. It is 43 miles from Atlanta to Griffin and 60 miles from Griffin to Macon, so that freight in course of transportation by the defendants' lines from either Louisville or Cincinnati to Macon passes through Griffin and over a distance

60 miles greater than to Griffin. The joint through rates by the defendants' lines from Louisville and Cincinnati to Griffin and Macon are as follows:

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
To Griffin,	1.43	1.25	1.11	.94	.77	.63	.44	.49	.36½	.33	.69	.79	.65½
To Macon,	1.07	.92	.81	.68	.56	.46	.28	.37	.30	.26	.50	.55	.53

The complainants insisted that by charging the higher rate to Griffin for the shorter distance, as above indicated, the defendants unjustly discriminated against Griffin and in favor of Macon and violated the provisions of the 4th section. They also asserted that the rate to Griffin was, in and of itself, an unreasonable one.

The defendants admitted the facts which are above set forth and found, but denied that the rate to Griffin was in and of itself unreasonable, or that there was any unjust discrimination against Griffin; and asserted that there was no violation of the 4th section, for the reason that the circumstances and conditions under which the transportation to Macon and Griffin was had were dissimilar.

Three issues are therefore made by the pleadings: First, Is the rate from Cincinnati and Louisville to Griffin an unreasonable one, in and of itself. Second, Do these rates unjustly discriminate against Griffin as in favor of Macon. Third, Are the circumstances and conditions under which the rates are made to Griffin and Macon so dissimilar as to justify the greater charge for the shorter haul.

1. Upon the first issue we have no evidence before us upon which to base a finding of fact. The real complaint in this case is not that the rate to Griffin was in and of itself unreasonable, but that this rate was unreasonable as compared with the Macon rate. The complainants introduced no testimony whatever upon this subject. The defendants produced several witnesses who testified that the rates to Griffin were in and of themselves reasonable. These witnesses did not state what they meant by saying that the rates were reasonable "in and of themselves," but it is evident from an examination of their testimony, both upon the direct and cross examination, that all they intended was that the rates were fair in view of the method by which rates in that territory were made up. As above found, the first-class rate to Griffin was

§1.43. The first-class rate to Macon was \$1.07. The distance to Macon is 60 miles greater and the freight is hauled through Griffin. Yet Mr. Shellman, the general freight agent of the Central of Georgia Railway Company, testified that the rates to both Griffin and Macon were reasonable and just "in and of themselves." He could only have meant that the adjustment of rates between those two points was reasonable and just. This idea is clearly brought out in the testimony of Mr. Knott, the first vice-president of the Louisville & Nashville Railroad Company, who, in answer to the question whether the rates from Cincinnati and Louisville to Griffin were just and reasonable in and of themselves, said: "I am familiar with the rates from Louisville and Cincinnati to Griffin; also with the methods or rules followed in making those rates, and, to a certain extent, with the conditions which have had to be considered in establishing those rates, and from such knowledge as I have I believe that the rates are not unreasonable." It is plain that what this witness had in mind was the relation in rates between Griffin and other points; under the method followed in making these rates, they were, in his opinion, just and reasonable.

It might be a difficult matter to say what elements should determine the absolute justice of the rate to Griffin, or whether, indeed, that question can ever be an absolute one, but is not always what is relatively just. However that may be as a general proposition, we are clear that there is no testimony in this case from which we can say that the rate to Griffin was or was not too high "in and of itself," and we make no finding upon that question.

2. Atlanta is what is called, in the parlance of southern rate-making, a basing point. Griffin is not a basing point. The rate to Griffin is made by adding to the Atlanta rate the local rate from Atlanta to Griffin. Macon is also a basing point, and the rate to Macon and Atlanta is in most instances the same. It necessarily follows that the merchant in Macon or Atlanta can own his goods cheaper by the amount of the local freight rate than can the merchant in Griffin. The complainants are wholesale merchants in Griffin; the case shows that they are the only ones there, and they desire to compete in Griffin and in territory upon either side of Griffin with similar wholesale merchants in

Macon and Atlanta. The wholesale merchant in Atlanta can lay his goods down in Griffin at exactly the same price that the complainants own theirs. When the complainants endeavor to sell in territory between Atlanta and Griffin, they are at a disadvantage to the extent of the freight rate from Griffin to the point of operation, and to the further disadvantage that they have paid a higher rate to Griffin than the Atlanta merchant is obliged to pay as the entire rate from where he purchases his goods to the point of sale. For instance, Hampton is a station upon the Central of Georgia Railway, 32 miles from Atlanta and 11 miles from Griffin. The Atlanta merchant pays upon his merchandise sold in Hampton the rate to Atlanta plus the local rate to Hampton, while the complainants must pay the rate to Atlanta plus the local rate from Atlanta to Griffin plus the local back from Griffin to Hampton. Manifestly the complainants cannot do business at any distance from Griffin itself. The testimony shows that their competitors in Macon and Atlanta sell in competition with them in Griffin, while they are only able to extend their operations for a few miles, and practically not at all towards those two cities. It is evident, then, that these rates do work a grievous discrimination against Griffin in favor of Macon and Atlanta, for not only does the general public at Griffin pay the higher rate upon articles which it consumes, but especially these complainants, and all persons desiring to engage in the business of wholesaling at Griffin, are in effect prohibited from so doing. Whether that discrimination is an unjust one is probably a question of law, depending upon the other facts herein found.

3. As to the dissimilar circumstance and conditions. The defendants contended in the first place that the rates to Macon were affected by water competition. Macon is situated upon the Ocmulgee River. The Altamaha River is formed by a junction of the Ocmulgee and Oconee Rivers, and empties into the ocean between Savannah and Brunswick. Regular lines of freight and passenger steamers run between both of these ports and New York city. Lines of railway also lead from both Savannah and Brunswick to Macon, and freight is carried by ocean and rail from New York to Macon over these lines of railway upon a joint through rate.

The Southern Railway crosses the Ocmulgee River at Lumber

City, and touches it again at Hawkinsville. The Plant System crosses the Altamaha at Doctortown. It is about 65 miles from Macon down the river to Hawkinsville and about 130 miles from Hawkinsville to Lumber City, which is upon the Ocmulgee River, a short distance above its junction with the Oconee. From Lumber City to Doctortown the distance is about 70 miles, from Doctortown to Brunswick about 90 miles, and to Savannah about 150 miles. There is an inside passage from the mouth of the Altamaha to Brunswick.

The defendants introduced one Captain Day as a witness, who testified, and the fact is found in accordance with his testimony, that he was the proprietor of a line of boats plying upon the Ocmulgee between Lumber City and Hawkinsville; that he had a contract with the Southern Railway, the terms of which did not very clearly appear, but under which, generally speaking, he agreed not to compete with that railroad, but to collect freight from various points upon the river between Lumber City and Hawkinsville which he delivered to that company at these points, receiving from them in return freight for distribution to different points upon the river. There was another line of boats which worked the Altamaha from the junction of the Ocmulgee and Oconee to Doctortown in the interest of the Plant System, in the same way that he worked the river above the junction in the interest of the Southern Railway. There was no business of any kind upon the Altamaha between Doctortown and its mouth, the entire region being swamp land.

As already stated Captain Day was, at the time of this hearing, operating a regular line of steamers between Hawkinsville and Lumber City, and the Plant System was operating another line of steamers between Lumber City and Doctortown. There were no boats plying between Doctortown and either Brunswick or Savannah, and no freight was ever actually carried from either of those ports to any point upon the Ocmulgee River by water, although there was at all seasons of the year water communication over which freight might have been carried between both Savannah and Brunswick to all points upon the Altamaha or Ocmulgee as far up as Hawkinsville.

Captain Day testified that in 1866 his father had operated a line of boats to Macon, but that since that year there had been no

actual water transportation above Hawkinsville, although the river was navigable, by the same boats which he used, between Hawkinsville and Macon for six or seven months in the year.

Captain Day said that if freight offered between Brunswick and Hawkinsville in any considerable quantities he would be willing to transport it at the following rates:

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate	.35	.30	.25	.20	.15	.12	.06	.10	.07	.04	.10	.15	.10

The rates from Hawkinsville to Macon over the Southern Railway are fixed by the Georgia Railroad Commission, and are as follows:

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate	.37½	.34	.32	.27½	.22½	.16½	.16½	.14½	.08	.08	.22½	.27½	.17½

The published steamship rates from New York to Brunswick are as follows:

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate	.55	.45	.35	.28	.23	.18	.18	.18	.18	.18	.28	.28	.31

If the ocean steamship rate, the rate at which Captain Day testified that he would be willing to carry from Brunswick to Hawkinsville, and the railroad commission rate from Hawkinsville to Macon be added together, it would give the following rates from New York to Macon:

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate	1.27½	1.09	.92	.75½	.60½	.46½	.40½	.42½	.33	.30	.61½	.70½	.58½

These rates would be lower than the present rates from Louisville and Cincinnati to Griffin by the following amounts:

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Rate	.15½	.16	.19	.18½	.16½	.15½	.03½	.06½	.03½	.03	.08½	.08½	.06½

Captain Day testified that he was himself the owner of five steamboats, of which he was using at present in his business but two, and that if freight was offered for transportation at remunerative prices between Brunswick and Hawkinsville, or at other points upon the Altamaha and Ocmulgee rivers, the means would be forthcoming to transport it.

The defendants also claimed that competition between railroads and markets created the necessary dissimilarity of circumstances and conditions. Five independent lines of railway enter Macon. These lines through their different connections by rail, and by rail

and water, reach all parts of the United States and actively compete for business from all available directions.

By means of these railway lines the markets in all parts of the United States are brought into connection with Macon, and many of those markets seek a rate which will enable them to dispose of their various products in Macon. Under the present adjustment of rates, the supplies consumed in Macon are obtained both from the eastern and from the western markets. The defendants introduced statements showing the amount of tonnage from the east and from the west respectively for the year ending March 31, 1893, that year being selected because the statements had been prepared for use in some other case, and could therefore be more conveniently obtained for use in this case. From these statements it appears that during this year 32,099,466 pounds of freight were brought to Macon, Ga., by the various railway lines from the eastern seaboard and from interior points in New England, New York, Pennsylvania, Maryland, Delaware and West Virginia, while during the same period 128,097,200 pounds were brought by rail lines from points on and beyond the Ohio and Mississippi rivers and from and *via* Lexington, Ky., Nashville, Tenn., Johnsonville, Tenn., and Florence, Sheffield and Riverton, Ala. This last-named tonnage consisted principally of packing-house products, grain of various kinds and its products, including the milled products of grain. It did not appear of what the first named tonnage consisted. The rates from New York, which may be taken as an average of the territory from which it was drawn, were as follows in 1893, and they were substantially the same at the time of the hearing :

Class	1	2	3	4	5	6	A	B	C	D	E	H	F
Sea & Rail	1.09	.96	.88	.70	.59	.48	.34	.47	.35	.34	.53	.60	.68
All rail	1.17	1.02	.88	.74	.62	.50	.36	.49	.37	.36	.55	.64	.72

These rates were considerably higher than the corresponding rates from Cincinnati and Louisville and other western points, and the inference, of course, is that articles purchased in the east and brought to Macon must have been bought there because they could be obtained more cheaply than in the west. Undoubtedly a change in the freight rates by raising the rate to Macon from western points would operate to increase the tonnage from eastern territory, and *vice versa*.

It appeared that Macon and Columbus, Ga., and Eufaula, Ala., were all distributing centers reaching, to a certain extent, the same territory. These cities and the carriers connecting them with the markets from which they obtained their supplies for distribution insisted that the rates to them, respectively, should be so equalized as to allow each one of these three towns its fair proportion of business. These various contending influences, operating over a long series of years, through rate wars, agreements and arbitrations, had finally produced the rates in force at these various so-called basing points, including Macon. We have nothing before us from which it is possible to determine whether the relation in rates so established is or is not, under all the circumstances, a reasonable one, and in all probability that question could never be answered with certainty. It did not appear why the various rates to these different basing points, including Macon, might not be somewhat raised, preserving at the same time the existing relation.

Griffin is reached by two of the most powerful southern railway systems, the Central of Georgia Railway and the Southern Railway, and these two systems actively compete through their connections for traffic both from the east and from the west. Upon eastern business Griffin enjoys substantially the Macon rate, but for some reason it is not given that rate upon western business, not having been considered apparently as a basing point in the rate-making system of that section. We were furnished with no satisfactory reason why Griffin should not have the same benefit of this competition as Macon, except that Macon was entered by five railways, while Griffin enjoyed the advantage of but two.

The defendants insisted that the Macon rate was made by conditions over which they had no control, and that it was beyond their power to alter this rate. If the Macon rate was fixed and they had no right under the law to make higher rates to intermediate points between Macon and Atlanta, then one of two things must happen, either they must raise their rate to Macon and so entirely lose that competitive business, or they must lower their rates to intermediate points and so lose the difference between the present rates and the Macon rate; and the Central of Georgia Railway insisted that in either case its revenues would

be unwarrantably crippled. For the purpose of showing to what extent either one of these courses would affect the revenue of that company, statements were introduced showing the present revenue upon business from Cincinnati and Louisville and other Ohio and Mississippi river crossings to intermediate stations between Atlanta and Macon, and what the revenue would be upon that business if the rate was reduced to the Macon rate. These statements cover, as do the previous ones, the year ending March 31, 1893. From these it appears that this railway company during that year derived from such business passing through Atlanta and destined to intermediate stations between Atlanta and Macon \$2,950.02. Had this freight been transported upon the basis of the Macon rate, the amount received would have been \$1,722.47. The revenue derived from such business passing through Atlanta and Carrollton during the same time to Macon was \$22,850.61. Both Atlanta and Carrollton business would be affected by the Griffin rate, for the reason that business *via* both those points passes through Griffin *en route* to Macon.

The total funded debt of the Central of Georgia Railway Company is \$45,220,000 and its capital stock is \$5,000,000. The funded debt is distributed as follows:

Various mortgage bonds.....	\$30,220,000
First preferred income bonds.....	4,000,000
Second preferred income bonds.....	7,000,000
Third preferred income bonds.....	4,000,000

In 1896 the income and expenses were as follows:

Gross earnings from operation.....	\$3,880,288 49
Total operating expenses.....	2,281,124 27
Net income from operation.....	1,099,164 22

The income account was as follows:

Income from operation.....	\$1,099,164 22
Income from other sources.....	816,525 79
Total income.....	\$1,415,690 01
Paid interest on funded debt.....	\$1,007,833 88
Paid rent for leased lines.....	245,197 54
Taxes.....	102,805 58
Total.....	\$1,854,836 45
Balance.....	60,853 56

The payments upon the funded debt were 5 per cent interest

on \$30,220,000 mortgage bonds, and $1\frac{1}{2}$ per cent on \$4,000,000 of first preference income bonds.

The railway lines covered by the foregoing statements are 1123 miles in length. The total capitalization is \$44,715 per mile, and the funded debt \$40,263 per mile.

It did not appear what the original cost of the construction of these railway lines was, nor what their present cost of construction would be. It appeared that the system of rate making which is attacked in this complaint prevailed upon the other lines entering Macon, but it did not appear to what extent.

Upon the foregoing findings of fact are the complainants entitled to relief?

1. The claim that the rate to Griffin is "in and of itself unreasonable" is not sustained. The burden of proving that issue is upon the complainants, and this burden they have not met.

2. Do the rates unjustly discriminate against Griffin in favor of Macon? That they discriminate clearly appears from the findings of fact. Every inhabitant of Griffin who buys a barrel of flour or a can of beef pays more for it than as though he resided in Macon. The complainants are absolutely prohibited from competing upon equal terms with the Macon wholesaler outside the limits of the city of Griffin itself. This sort of discrimination is intolerable, and should under no circumstances be permitted unless justified by necessity. Competition is alleged as the justification. Plainly water competition cannot be successfully invoked, for the only water competition is from the east, and Griffin enjoys substantially the same eastern rate as does Macon.

Macon has five competing railroads. Griffin has two. The two lines which enter Griffin are among the most powerful and active in the south. Both these lines by their connections directly reach Louisville and Cincinnati, and compete directly for the business upon which the obnoxious rates are charged. Why, then, does Macon enjoy the benefit of this competition while Griffin does not? Apparently for no other reason than that the railways interested arbitrarily determine that Macon shall be a "basing point," and that Griffin shall not be; competition shall be given its effect at Macon, and shall not be given its effect at Griffin. No other reason is suggested, and no other reason is possible.

We do not think this accords with the spirit or the letter of the Act to Regulate Commerce, the prime object of which was to do away with all sorts of discrimination. It should not be left to the whim of one or half a dozen railroad managers to determine whether a given city may or may not be a "trade center." The same causes which operate in one instance should have the same effect in another instance. We hold upon the findings before us that Griffin is entitled to as low a rate from Louisville and Cincinnati as is Macon, and that the charge of a higher rate is an unjust discrimination under section three.

This southern system of rate-making has been uniformly condemned by the Commission as vicious in principle and in contravention of the Act to Regulate Commerce.

Harwell v. Columbus & W. R. Co. 1 I. C. C. Rep. 236, 1 Inters. Com. Rep. 631; *Martin v. Chicago, B. & Q. R. Co.* 2 I. C. C. Rep. 46, 2 Inters. Com. Rep. 32; *Re Atlanta & W. P. R. Co.* 3 I. C. C. Rep. 24, 2 Inters. Com. Rep. 461; *Cordelle Machine Shop v. Louisville & N. R. Co.* 6 I. C. C. Rep. 361.

3. Are the rates complained of in violation of the 4th section? Confessedly they are, unless justified by dissimilar circumstances and conditions.

The defendants rely upon water competition to make out the necessary dissimilarity, but there are no facts in the case upon which to base that contention. The Commission early held that water competition which would create dissimilar circumstances and conditions under the 4th section must be "actual competition which is of controlling force, in respect to traffic important in amount," and this rule has been often reaffirmed. *Harwell v. Columbus & W. R. Co.* 1 I. C. C. Rep. 236, 248, 1 Inters. Com. Rep. 631, 636; *Lehmann v. Southern P. R. Co.* 4 I. C. C. Rep. 1, 3 Inters. Com. Rep. 80; *San Bernardino Bd. of Trade v. Atchison, T. & S. F. R. Co.* 4 I. C. C. Rep. 104, 3 Inters. Com. Rep. 138; *Merchants' Union v. Northern P. R. Co.* 5 I. C. C. Rep. 478, 4 Inters. Com. Rep. 183. And the carrier justifying upon this ground must affirmatively show the necessary facts. *James v. Canadian P. R. Co.* 5 I. C. C. Rep. 612, 4 Inters. Com. Rep. 274.

There is no water competition between Louisville and Cincinnati and Macon, and none, therefore, which directly affects the

rates attacked ; but the carriers insist that there is such competition between the eastern markets and Macon, which either does or might affect these rates. Assuming—and that fact is not found—that ocean competition controls the rate between New York and Macon, still that rate is materially higher than the rate from Ohio River points. If the rate from the last-named points to Macon were raised to equal the New York rate, and the Griffin rate reduced to the New York rate, the revenues of the defendants would be increased rather than diminished, unless that change in rates operated to divert considerable quantities of traffic from the western to the eastern markets. There is nothing to show that this would happen to any considerable extent, and taking the character of the freight which is now brought from Ohio River points and which consists largely of products produced in the west and not in the east we do not well see how this could be true.

As to the rates which Captain Day testified he would be willing to make from Savannah and Brunswick to Hawkinsville, it is sufficient to say that no freight is actually transported by water at the present time over that route ; and there is, therefore, no competition of that sort. The mere existence of a water-way which might afford an avenue for such transportation is not enough. There must be actual competition by water and this competition must dictate the rate. A railroad rate so low as to drive water transportation out of existence cannot be justified by showing the possibility of water competition. The law as interpreted by this Commission permits railroads to *meet*, not to *extinguish*, such competition.

The defendants also rely upon competition between railroads and markets. This competition does undoubtedly exist in a most active form and is the controlling factor in making the Macon rate ; but that it creates such dissimilarity of circumstances and conditions as will justify the carrier in charging more for the short than for the long haul without an order of this Commission is no longer an open question with us. It was said in the original case, *Re Louisville & N. R. Co.* 1 I. C. C. Rep. 31, 81, 1 Inters. Com. Rep. 278, that there might be exceptional cases in which competition between carriers subject to the provisions of the Act to Regulate Commerce would create such dissimilarity. No case of that sort was then before the Commission. No such

case subsequently came before it, and finally it was held in *Trammell v. Clyde S. S. Co.* 5 I. C. C. Rep. 324, 4 Inters. Com. Rep. 120, that there could be no such case; that competition between railroads subject to the Act could never make out a case of dissimilar circumstances and conditions within the meaning of the statute. This decision has been uniformly adhered to since. *Lynchburg Bd. of Trade v. Old Dominion S. S. Co.* 6 I. C. C. Rep. 632; *Re Atchison, T. & S. F. R. Co.* 7 I. C. C. Rep. 1.

It would serve no useful purpose to restate here the grounds of that decision. Whether they are sufficient is for the courts. It may be incidentally observed, however, that carriers in most parts of the country have accepted the interpretation put upon the 4th section by the Commission, and have adjusted their tariffs accordingly, but that in the south railway companies have insisted that this could not be done and have generally neglected to do so. What the peculiar conditions in that section are which prevent the application of the same rules prevailing elsewhere has never been clearly shown. It is difficult to believe that there are such conditions.

It should also be distinctly noted that if the above view of the law is wrong, and if there can be exceptional instances in which competition between carriers subject to the Act may afford the dissimilarity of circumstances and conditions under the 4th section, this is not one of them. Indeed, it is difficult to conceive of a situation which more strongly calls for the application of the inhibition of that section than the present. Here are two cities, each of which has in fact railway competition, but in case of which the railroads interested have determined that one shall and the other shall not enjoy the benefit of that competition in the matter of rates. If the mere fact that competition exists between the different carriers interested in these and kindred rates gives to those carriers absolute jurisdiction, so to speak, to say where effect shall and where it shall not be given to such competition, it is difficult to understand what remains of the 4th section.

The Central of Georgia Railway Company insists that if compelled to make the rate to Macon and Griffin the same it must either raise the Macon rate and thereby lose entirely that business, or lower the rate to Griffin and other intermediate points, and thereby lose in revenue the difference between the present

and the reduced rates; and it earnestly maintains that any reduction of its present revenues would be unwarranted.

To inquire whether the revenues of this railway company might be or ought to be reduced below the present point would raise several interesting and important questions, for the consideration of which we have not before us in this case the necessary data. We are furnished with a statement of the funded debt and capitalization of the road, and also with a statement of its financial operations for the last year. We are not informed how this debt was created, what it would cost at the present time to replace the property represented by this capitalization, nor what that property is fairly worth, if indeed there be any standard by which its value can be measured. It appears that the company is now earning at the present rates a fair return on considerably more than the probable cost of constructing and equipping the road at current values. If the rates to all intermediate points between Atlanta and Macon were adjusted to the Macon rate, the loss in revenue would be \$1,231.35. We should hardly assume that a reduction in revenue to this small amount would cripple a railroad with a net income from operation of over \$1,000,000. Nor is it certain that there would be any reduction in earnings since the increased business consequent upon the lower rate might more than make good that loss. We see nothing in this phase of the case which would cause us to hesitate in requiring this defendant to bring its rates into conformity with the statute.

We might well put our decision as to this point upon a broader ground. Railroad companies have the right to earn a proper return upon some investment, just what has not been very definitely determined, but in earning it they must operate their property in accordance with the law. The requirement of the statute is that they shall not discriminate between localities, and that they shall not charge more for the short than for the long haul. The fact that a railroad cannot earn a return to which it is otherwise entitled, without violating one or both of these statutory provisions, is no excuse for their violation.

If by the reduction of the rate to intermediate points the revenue of the Central of Georgia Railway Company will be unwarrantably lessened,—and upon that question we express no opinion,—then the defendant should readjust its rates by raising the

Macon rate sufficiently to offset the reduction to intermediate points, and thereby remove the present unjust discrimination. Its answer is that it could not, if it would, do this; that the Macon rate is beyond its power to modify. The Macon rate is the result of agreement. The Central of Georgia Railway Company is a party to that agreement, and has the same power over it that every other party has. If it has not sufficient influence to secure the adoption of such rates as will, under the law, yield to it a proper revenue, that is the misfortune of those who have become the owners of this property, which must be endured as every other misadventure of business is.

An order will issue in accordance with the foregoing views.

IN THE MATTER OF ALLEGED UNLAWFUL RATES AND
PRACTICES IN THE TRANSPORTATION OF
GRAIN AND GRAIN PRODUCTS BY ATCHISON, TO-
PEKA & SANTA FÉ RAILWAY COMPANY AND OTHERS.

Decided June 29, 1897.

1. Shipments of grain were carried to Kansas City, Mo., from points west thereof at local rates, and quantities of grain were afterwards reshipped and rebilled from Kansas City to Chicago or other destinations at the balance of the established through rate from the original point of shipment to Chicago or other ultimate destination, instead of the higher local rate in force from Kansas City to such destination. There was no agreement for through carriage between shipper and carrier at the original point of shipment, no other destination than Kansas City was named, and upon carriage of the grain to that point and delivery to consignee the transportation was completed and the local rate in effect to Kansas City was paid; but the practice was to allow the consignee or other owner of grain at Kansas City to ship from Kansas City to Chicago and other points at the "balance of the through rate," upon presentation of the paid expense bill to Kansas City and certification by a joint agent of carriers at Kansas City. Under this "expense bill" practice it was practicable, through transfer of expense bills, to secure a lower "balance of through rate" than would result from deducting the local rate between the actual point of origin and Kansas City from the through rate between said point of origin and the final destination, and other rate manipulations were possible. *Held*, That such shipment and reshipment did not constitute a through shipment from the point of origin to the point of final destination, and grain so shipped and reshipped was not entitled to the benefit of the through rate in force. *Held, further*, That the shipment from the point of origin to Kansas City was local, resulting in the grain becoming Kansas City grain, and the fact that it had come from a point farther west was no reason for applying on shipments of such grain from Kansas City any less or different rate than was in force from Kansas City.
2. No opinion upon the practices of milling or reconsigning or holding in transit, if the shipment is a through shipment upon a through rate, is expressed.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner* :

The matter under consideration is the practice of rebilling at Kansas City and other Missouri River points at the balance of the through rate. The investigation, in the course of which that

consideration arises, was begun at the primary instance of the Commission and was prosecuted at Chicago on August 4, 1896, and succeeding days. It appeared in the course of that investigation that the practice had been temporarily suspended pending a decision upon its legality. The question is, for many reasons, an important one and we have given it careful consideration.

Although the details are somewhat complicated, the practice itself is simple in principle and the situation out of which it arises easy of comprehension. Kansas City is an important railway center and a basing point in rate making. The rates by all the lines from there to Chicago are the same, and this is also true with reference to any other competitive point. Very large quantities of farm products pass through Kansas City from the West upon their way to market, coming from the point of origin by various routes. These products pay the local rate to Kansas City; from Kansas City they are shipped out over various lines to the point of ultimate destination, not at the rate between Kansas City and that point, but at the balance of the through rate between the point of origin and the point of final destination deducting the local already paid. To illustrate by an actual example: During the period covered by this investigation, which was from April 1st to July 7th, 1896, and for a considerable period prior thereto, the rate on corn from Kansas City to Chicago was 20 cents per 100 pounds. Hutchinson, Kansas, is a station upon the Santa Fé Railway, which runs from there through Kansas City to Chicago, Ill. The through rate from Hutchinson to Chicago was 25 cents, and the local rate from Hutchinson to Kansas City $13\frac{1}{2}$ cents. A shipper from Hutchinson would forward a carload of corn to Kansas City and pay the local rate of $13\frac{1}{2}$ cents. If afterwards he concluded to send this carload on to Chicago he might ship it by the Santa Fé Road, or by any other road between the two points, at the balance of the through rate from Hutchinson. The Chicago & Alton Railroad, for instance, would transport this carload of corn from Kansas City to Chicago, not for 20 cents per 100 pounds, but for $11\frac{1}{2}$ cents. If the grain was sold at Kansas City, the purchaser succeeded to the right of sending it forward at the reduced rate.

When the shipper shipped this carload of corn to Kansas City he had, as an ordinary thing, no idea or purpose as to its ultimate

destination. It might be eaten in Kansas City; it might be sent to the Chicago market, or it might go to the Gulf; there was nothing upon any of the papers connected with its transportation to indicate what its destination beyond Kansas City was, or that it was destined to any point beyond; but if he did subsequently elect to ship it beyond Kansas City, the rate to any point he might select was the difference between the through rate from Hutchinson to the point of destination and the local rate which he had already paid from Hutchinson, and this rate was always different from the rate between Kansas City and the point of destination.

The result, of course, was that nearly all grain was shipped into Kansas City upon a local bill of lading in the first instance and was afterward sent forward, if it finally went forward, upon a new bill of lading at the balance of the through rate. The difference between the through rate from the point of origin to the point of destination and the local rate from the point of origin to Kansas City was not the same in all cases, nor, indeed, in most cases, and consequently the balance of the through rate continually varied. Thus, the balance of the through rate from Hutchinson to Chicago was $11\frac{1}{2}$ cents, from Salina, Kan., 11 cents, from Ada, Kan., 9 cents, and from Coronado, Kan., 8 cents, while from a point within a few miles of Kansas City it might be 15 cents. That is, different carloads of corn might be transported from Kansas City to Chicago in the same train at rates varying from 8 to 15 cents, while the rate at which a carload of corn originating in Kansas City would be transported was 20 cents.

The reason for this practice seems to be found in the history of the development of the railway systems centering at Kansas City and the corresponding business methods which grew up. Originally all the lines from the east terminated at Kansas City. From thence other lines were built toward the west, so that the carriers which brought freight to that point and the carriers which took it at that point for transportation east were not the same. Freight was brought to Kansas City at the local rate by the western roads and from thence carried east upon the joint rate to the point of destination by the eastern roads. Finally, however, the Santa Fé crossed the river to the east, building to

Chicago, while the Rock Island crossed it from the east to the west into Kansas. As a result, the Santa Fé could make a through rate from stations on its line west of Kansas City to Chicago, which was less than the sum of the local rates from those points to Kansas City and from Kansas City to Chicago. Grain destined for the Chicago market would therefore go upon a through bill of lading directly to Chicago without stopping at Kansas City. The testimony in this case is that the practice of rebilling at the balance of the through rate thereupon sprang up for the preservation of the elevator interests at Kansas City, but it is evident that it must also have been for the purpose of enabling eastern roads without western connections to secure a portion of the business from the west. If the through rate upon the Santa Fé to Chicago was less than the sum of the locals, it is manifest that a line beginning at Kansas City, like the Chicago & Alton, could obtain no portion of the business originating on the Santa Fé west of Kansas City, whereas if the through rate was "protected" the shipper would ship to Kansas City by the Santa Fé, and from there select his route to Chicago, or wherever else he might desire to forward his products, since he thereby acquired the opportunity of testing the market for those products in Kansas City without loss in freight rate.

The machinery by which this rebilling was effected in Kansas City was somewhat more complicated. The purpose was to make certain that the shipper, who demanded a reduced rate out, had already paid the corresponding local rate into Kansas City. To this end, the roads centering there employed a joint agent who maintained an office with from ten to fifteen clerks. The local shipper upon the arrival of his grain at Kansas City would pay the local rate and receive from the railroad company transporting the grain what was known as an expense bill. This expense bill gave the amount paid, and the nature of the freight upon which it was paid, the point of origin, the road over which it had come to Kansas City, the number of the car in which it came, and if unloaded into an elevator, the name of the elevator in which it was stored. In case the shipper afterwards desired to forward this grain, he would cause it to be loaded and would then take his expense bill, with a bill of lading partly filled out, to the office of this joint agent. The joint agent would transfer

from the expense bill to the bill of lading the facts contained on the expense bill, and would certify the rate at which the grain was entitled to go from Kansas City to its destination. The expense bills were retained by the joint agent.

In case of change in the through rate from the point of origin to the point of destination between the time the grain was shipped in and the time it was shipped out, two rules prevailed. If there was a reduction, the grain went forward at the old rate; if an advance, it went forward at the old rate for thirty days, after that, at the advanced rate.

It is manifest that this system might afford opportunity for many abuses. The rate from Kansas City to Chicago was 20 cents. The balance of the through rate from Salina was 11 cents, and from Coronado 8 cents. An expense bill showing that a carload of corn had been transported from Coronado to Kansas City entitled its holder to have a carload of corn transported over any line from Kansas City to Chicago for 8 cents per hundred, while the published rate was 20 cents. If a corn grower who had hauled by wagon and stored in some elevator a carload of corn from the vicinity of Kansas City could obtain possession of an Ada expense bill he thereby saved 11 cents a hundred upon the price of that corn in the Chicago market. If a shipper from Hutchinson who had paid $13\frac{1}{2}$ cents into Kansas City could obtain a similar expense bill he could complete the transportation of that carload to Chicago for $22\frac{1}{2}$ cents per hundred, while the through rate was 25 cents. It was suggested that inasmuch as these expense bills must have had an actual market value, they would probably be bought and sold, and the testimony shows that this was done.

The thing aimed at, of course, was to preserve the identity of the grain, to make sure that the same wheat or corn which was brought in at a given local rate had the benefit of that same rate when it went forward. A large part of the wheat and a considerable portion of the corn passing through Kansas City was elevated, and of course with reference to this it was absolutely impossible to preserve its identity. It was, however, a rule that an expense bill for grain stored in one elevator could not be applied to the transportation of grain taken from another elevator, and the joint office required a loading-in and a loading-out ele-

vator ticket before it would certify the rate upon the bill of lading, In case the grain was not elevated but was transferred from car to car, it was possible to preserve the exact identity, and in such case it was always done or intended to be done. The joint agent testified that when he dealt with parties whom he believed to be honest he did not verify in every case the facts, but did so in enough cases so that he was reasonably sure there was no deceit in this respect.

It appeared that a certain amount of grain which came into Kansas City for which expense bills were given was consumed there, and it was suggested that this would in time produce a redundancy of expense bills. It appeared, however, first, that grain intended for consumption in that city was not ordinarily stored in the elevators, but was taken directly from the cars, in which case the expense bill would be valueless; second, that more or less grain was brought in by team and otherwise, against which no expense bill was ever issued. It also appeared that at the time covered by the hearing, and for a long time before, an expense bill could only be used within six months after its date, and the joint agent testified that it was his intention to "retire" enough of these expense bills to make good the difference between what was expensed in and what was shipped out. How he got at this number or how he determined what particular bills to retire did not appear.

It also appeared from the testimony of one witness, although this branch of the case was not developed, that if wheat was taken from an elevator for milling purposes, the miller received the expense bill along with the wheat and that he was entitled to ship an equal weight of flour to whatever point he might select at the difference between the rate on flour from the point of origin and the local rate shown by the expense bill.

Grain sometimes requires elevating for various purposes, and sometimes not. The number of elevators at Kansas City is eighteen, with a capacity of about 5,000,000 bushels.

Cars consigned to Kansas City occasionally, though seldom, went directly through without unloading. In such case the destination was changed and the car rebilled there, the rate from there on being the balance of the through rate, and the local charges up to that point following the shipment. In this case

there was no expense bill, but, as we understand the testimony, the joint agent at Kansas City made the necessary notation upon the bill of lading.

The practice of "protecting the through rate" also prevailed at other Missouri River points, as Leavenworth, Atchison, St. Joseph, Omaha, etc., and the authority of the joint agent extended to all these points.

The testimony apparently showed that the method of the Union Pacific in respect to through billing at Kansas City and other Missouri River points was not exactly the same as that of other carriers. All the other roads received the full local rate to Kansas City, and no part of that rate was refunded when the grain was taken forward at the balance of the through rate. The Union Pacific seems to have treated the rate as a through rate proper, and to have received as its division of that rate a less sum than the local rate. It exacted in the first instance the full local rate to Kansas City, but upon presentation of the expense bill with a certificate from the joint agent that the grain had been reshipped to a particular destination it would refund the difference between the local rate and its division upon a through rate from the point of origin to the point of destination to the holder of the expense bill. In this case the expense bill would be retained by the Union Pacific instead of the joint agent. The original shipment to Kansas City was a strictly local one, but upon being satisfied that the grain had gone forward, the Union Pacific treated the transaction as though it had been a through shipment in the first instance from the point of origin to the point of destination.

The first question arising upon these facts would seem to be, Were the shipments under this practice through shipments, and for that reason entitled to the benefit of the through rate which they received?

It is difficult to understand how they can be so treated. Apparently they have not a single incident of a through shipment, but, upon the contrary, the transportation from the point of origin into Kansas City was in every respect local. The bill of lading was local; the rate was local. There was nothing upon any paper connected with the transaction which indicated that the grain was to be carried beyond Kansas City. As a matter of

fact, there was no definite purpose on the part of its owner to carry it beyond. If it did finally go farther, there was no present idea to what point it would go. It might be consumed at Kansas City; it might be sent forward to Chicago; it might be exported to Liverpool. The object of the owner of the grain was simply to take it into Kansas City for the purpose of disposing of it there, without any thought as to its ultimate destination.

The mere fact that the grain was elevated at Kansas City would not necessarily deprive the shipment of the quality of a through shipment, for that might be necessary for the purpose of transferring it from one car to another or for the purpose of preserving the grain itself. The circumstance that it was stored for a considerable length of time while in transit would not of itself make it a local shipment, for the carrier might find that needful to the economical transportation of the grain over the through route. It is possible that even though the parties contemplated that it should be so held in storage *in transitu* the carriage might still be properly called "through."

An indispensable element in every through shipment would seem to be a contract for such through service; an agreement between the parties at the inception of the carriage that the freight shall be transported to the point of destination at the through rate.

This exact question has been already ruled upon by the Commission in *Chicago, R. I. & P. R. Co. v. Chicago & A. R. Co.* 3 I. C. C. Rep. 450, 2 Inters. Com. Rep. 721. The facts upon which that decision was based were identical with those here involved, save that the commodity was live stock instead of grain. The Rock Island Company owned and operated a line of railroad extending from Chicago to Kansas City, and controlled and operated in connection with that line another line of railroad extending west from Kansas City. The road of the Chicago & Alton Company extended only between Kansas City and Chicago. The various roads to the west of Kansas City, including that controlled by the Chicago, Rock Island & Pacific, made rates upon live stock from various points west into Kansas City. The different lines between Kansas City and Chicago made rates upon live stock between those two points. The lines east and

the lines west of Kansas City agreed upon through rates upon live stock from points west of Kansas City through Kansas City to Chicago which were less than the sum of the local rates, one of those lines being the Chicago, Rock Island & Pacific and its road west of Kansas City. It was the custom of this road to allow shippers of live stock to ship into Kansas City, unload there, try the market, and if the cattle were not sold within so many days (just how many the case does not show), then to reload and reship them to Chicago upon the balance of the through rate, treating the entire shipment as one through shipment.

The Chicago, Rock Island & Pacific, desiring to control the traffic which it brought into Kansas City from the west between Kansas City and Chicago, refused to agree upon any joint division with the Chicago & Alton. Thereupon, the latter company advertised that it would ship from Kansas City to Chicago at the balance of the through rate, so that the shipper who had brought his cattle to Kansas City and unloaded them there might, if he desired, send them forward to Chicago by its line at exactly the same rate at which he could send them by the Rock Island line.

Thereupon, the Rock Island road filed a complaint with the Commission alleging that this practice upon the part of the Chicago & Alton was illegal, for the reason that it transported this live stock from Kansas City to Chicago at a less rate than it transported live stock originating at Kansas City, although both shipments were strictly local. The Chicago & Alton replied that its practice was exactly the same as that of the petitioner, for that when the cattle were once unloaded at Kansas City if they were afterwards taken up by the Rock Island and sent forward to Chicago, that also was a local shipment.

The Commission did not decide whether this practice of protecting the through rate was legal or illegal, but it did decide that the shipment by the petitioner was not a through shipment. In disposing of the case, Cooley, Chairman, said :

"It is impossible to say upon the evidence in this case that when the complainant receives live cattle at points west of Kansas City, at through rates to Chicago, but with an understanding that they are to be unloaded at Kansas City to try the market there, there is in point of fact a through shipment from the point

of origin to Chicago. So far from that being the case there is no understanding that there shall be any through shipment at all, and whether there shall be one or not is understood to depend entirely upon the state of market at Kansas City, and upon the option of the purchaser if the cattle are there sold. If the cattle are finally transported to Chicago, there is not only more than one loading and unloading, but there is also necessarily some loss of time beyond what would be expected to take place in case of a through shipment. The identity of the cattle may to some extent be changed; the original shipper may cease to have anything to do with the transportation of the freight at that point; and it is pure fiction that treats the transportation as one and indivisible from the point of origin to the point which finally, at the option of the parties, proves to be that of ultimate destination."

Later on this language is used:

"The reshipment by the complainant under the circumstances attending its course of business from Kansas City to Chicago is no more a part of a through transportation than is the shipment of cattle brought into Kansas City from points to the west and taken thence by the respondent. The fiction that the case of reshipment is a part only of one transportation is just as applicable to the one case as to the other, and comes just as near representing a fact."

We adopt and approve that case to the extent necessary to decide the question before us, and no further. The Commission there carefully abstained from expressing an opinion upon the legality of the thing accomplished. Whether there may be in the case of freight something akin to a through rate with stop-over privileges is not considered nor decided. If so, those privileges should be published as a part of the rate, and their reasonableness would be involved in the reasonableness of the rate. We hold that upon the facts before us the shipments would not be through shipments from the points of origin to the point of final destination and as such entitled to the benefit of the through rate which was in force.

If these shipments are not through shipments, and for that reason entitled to a through rate, cannot the charging of a lower rate which is equivalent to the balance of the through rate from

Kansas City to the point of ultimate destination be justified under the peculiar circumstances? When this grain is brought to Kansas City the first shipment is, to be sure, a local shipment, but it is then certain that the great balance of it will be sent forward to some other point. Now, taking into consideration the purposes for which grain is brought there and the manner in which it is handled there, are not the conditions so far dissimilar as to justify the carrier in treating as a through shipment that which in fact is not and in thereby granting a lower rate from Kansas City to the point of destination than the published rate?

In support of this contention many weighty reasons have been advanced. It is said to be anomalous that the same train between Kansas City and Chicago should transport corn for varying rates although the service rendered is exactly the same, but this would be true if the shipments were in fact through shipments. Nobody questions that a rate may be made from Hutchinson to Chicago or from Ada to Chicago through Kansas City, which is less than the sum of the local rates from those points to Kansas City and from Kansas City to Chicago. Nobody in this proceeding questions the reasonableness of the through rates between those points and Chicago actually in force in the present instance. It has been decided by this Commission that a through rate which gives to one carrier as a division its full local rate is not illegal. If, therefore, the Santa Fé and the Chicago & Alton had joined in a through tariff from these points to Chicago upon the basis that the Santa Fé should receive as its division its full local rate, and that the Chicago & Alton should take the balance, the condition of things would have been exactly the same as it was under the practice of protecting the through rate; that is, the Chicago & Alton would have received 9 cents if the grain came from Ada and 11½ cents if it came from Hutchinson as against 20 cents if it originated at Kansas City, although every carload might have been taken out of the same elevator and transported in the same train. The cost of the service to the Chicago & Alton would have been exactly the same.

It is further urged that in disposing of questions like this the actual condition of things cannot be overlooked. The cost of transportation from the grain fields of the west to the various points of consumption is a very important factor in determining

the price of the grain. At the present writing, March, 1897, corn sells upon the Chicago market for about 24 cents per bushel, and the through rate from Coronado, Kansas, to Chicago is about 15 cents per bushel. Unless corn raised in Kansas can be taken to the seaboard at a rate far below what would be a fair local rate, it cannot be grown in Kansas. It is to the interest of both the grower and the consumer that these rates should be as low as possible. It is for the interest of the carrier that it should be allowed to make such rates, so long as they are in any degree remunerative, as will enable the farmer in Kansas to raise corn and send it to market. It has been often said that the local rate might well be more than the through rate. Various reasons have been assigned for this, as that through traffic is handled in larger quantities, without the expense of frequent stops, transshipments, etc., and therefore more cheaply. These and similar reasons look to the relative cost of the service. They do not and cannot alone justify the rate which is and must be made in transporting farm products from the far west to the eastern market. To a certain extent traffic must pay what it can afford to. In a sense a railroad accommodates first of all its local traffic. This traffic it should carry at a fair compensation. But when it has done that, it may be allowed to take through traffic at a price which is remunerative, considering the fact that the railroad is there; at a price which would not justify the building and equipment of the road for that alone, but which does yield some profit in its operation. On no other theory can the enormous distances in this country be overcome.

In this connection it is said that ordinarily grain products cannot be taken directly from the field to the consumer. The condition of the farmer, the nature of his buildings, the manner in which he conducts his business, all compel him to sell his product within a certain time. That product when sold by him must be stored at some point. The person who buys it of him is not ordinarily the same person who sells it to the consumer. Naturally these products are brought into and concentrated at large centers where they are bought and sold and where the money is found with which they can be handled. This is necessarily so, and if the operations of buying and selling and storing are properly conducted it is for the interest both of the producer and of the con-

sumer that it should be so. The farmer can obtain a better price for his grain if he can send it into the market of Kansas City or Chicago where he meets the whole world as a buyer than if he is obliged to sell it in the field to the consumer or to some middleman who must send it directly to the consumer.

In the same line is the embarrassment under which the carrier rests in making a local rate to Kansas City and another local rate from Kansas City to Chicago. Under the Act the rate paid by a bushel of wheat in that case, going from Hutchinson to Kansas City and from Kansas City to Chicago must be exactly the same between Kansas City and Chicago as is the rate upon wheat originating at Kansas City, and the rate from Kansas City to Chicago cannot be less than the rate from all intermediate points to Chicago. This, theoretically, may be just, but practically the wheat from Hutchinson must be carried at a less rate if the farmer at Hutchinson is to receive anything for his product.

We are also mindful of the fact that the ownership of the railway lines themselves at Kansas City, in that some of them extend east and west of the Missouri while the majority from either direction stop there, introduces an element into the situation which makes the proper adjustment of rates and the proper division of traffic a difficult one at that point and which largely created the present system.

All of these considerations we have carefully weighed. We should be extremely reluctant to make any decision which might interfere with the cheap and convenient transportation of grain products from the far west to the eastern market or with the most expedient method of meeting the difficulties which exist at Kansas City. We do not believe that our decision is open to these objections. Whether it is or not, we are constrained to hold that the practices above set forth are in violation of law.

In the first place, assuming the principle to be justifiable, the methods disclosed are indefensible. The time allowed between the shipping in and the shipping out was ridiculously long. The whole system as conducted was altogether too loose. It lent itself to the manipulation of rates and prices. It opened the door to speculation in transportation itself. Instead of securing the producer and consumer a better market and a cheaper freight rate, it offered a fertile field to the speculator and jobber.

It is not, however, upon the ground of defective methods that we rest our decision, but upon the ground that whatever might be our views of what the law ought to be, there is no other possible interpretation of the law as it is.

The central idea of the Act to Regulate Commerce is equality. The thing aimed at is to prevent discrimination. The carrier must not discriminate in any form, whether between individuals, commodities or localities.

We hold that the shipment from the point of origin into Kansas City was a local shipment; and no other construction of that transaction seems possible. While it does not very clearly appear just what the method adopted by the Union Pacific was, we think that that came ultimately in fact and in intention to the same thing.

Now, if the original shipment was a purely local one, when that grain was taken up at Kansas City for further transportation, it must be transported at exactly the same rate with grain originating at Kansas City unless the fact that it had been brought from a point farther west entitled it to a cheaper rate. To hold that it did would be manifestly to discriminate in favor of the section in which the grain originated as against grain originating at Kansas City or that vicinity.

We have already once held to the same effect in *James v. East Tennessee, V. & G. R. Co.* 3 I. C. C. Rep. 225, 2 Inters. Com. Rep. 609. In that case the complaint was that a higher rate was charged from Johnson City, Tenn., to Boston than was charged from Atlanta, Ga., to the same point, although the route from Atlanta was through Johnson City and the distance greater. As an excuse the carrier alleged that the lumber (which was the merchandise in question) had been shipped into Atlanta from the various places where it was manufactured and had already paid one rate over the road of the initial carrier, and that for that reason if the owner elected to ship it to Boston it was taken on at a less rate than it otherwise would have been. It was held that the fact that it had been brought to Atlanta from some other point and there unloaded for the purpose of testing the market would not entitle it to a different rate when taken forward afterwards; that the new shipment was a new undertaking and that the rate upon this lumber must be the same as upon any and all other shipped from Atlanta.

Morrison, Commissioner, said (p. 234):

"The origin of the goods, or the fact that lumber comes to their roads from the mill or over some other railroad or over a wagon road, is not an element which enters into the question of what they may reasonably demand for the transportation services they are to render. This equitable rule is not altered in the case under consideration by the statement of the traffic manager of one of the defendant companies who, as a witness, said: 'We have already brought that lumber from the local cities to Atlanta.' When freight is taken up at Macon or elsewhere and delivered at Atlanta for sale or other purpose not incident and necessary to through transportation, the shipment is complete, and when such freight is forwarded the carriage from Atlanta is a new undertaking. The character of a local shipment between the cities or between the mills and cities of Georgia is the same when made by the defendants or some one of them as if made by some other railroad company, and, whether made by one or the other, it cannot legally have the effect of raising or lowering the charges for transportation of the freight when reshipped."

We think the principle of the above case is correct and that it should be applied in the case before us. When the grain was unloaded and put upon the market at Kansas City, it was not, in any possible construction, there temporarily in transit upon a through shipment. It had reached its destination. It had no other destination. It had become Kansas City grain. When it was shipped out it must take the Kansas City rate, and the fact that it had come from a point farther west was no reason for giving it a different rate.

We do not desire to be understood as expressing any opinion upon the practices of milling or reconsigning or holding in transit if the shipment is a through shipment upon a through rate. What we decide is that, upon the facts found, the shipment from the point of origin to Kansas City was local and, that being so, when the grain went forward it should have been carried upon the same terms and conditions with grain which originated at Kansas City.

SUFFERN, HUNT & COMPANY

v.

INDIANA, DECATUR & WESTERN RAILWAY
COMPANY.

(No. 446.)

SUFFERN, HUNT & COMPANY

v.

INDIANA, DECATUR & WESTERN RAILWAY COM-
PANY, AND CINCINNATI, HAMILTON & DAYTON RAILWAY
COMPANY.

(No. 448.)

Decided July 1, 1897.

1. Rules or regulations which in any wise change, affect or determine any part or the aggregate of a carrier's rates, fares or charges must be shown separately upon the carrier's posted schedules of rates, fares and charges; and any such rules or regulations promulgated by the carrier in circulars issued independently of its rate schedules are not lawfully in force.
2. Rules or regulations which, if enforced, would result in changing or affecting rates or charges shown on published schedules must be notified to the public for the time required by law for other rate changes. The notice should set forth the changes proposed to be made in the schedules then in effect, and such changes must be shown by printing new schedules or be plainly indicated upon the schedules in force at the time.
3. Circulars issued by a railway company prescribed maximum and minimum carload weights for grain depending upon the capacity of the car furnished by the railway company to the shipper; the rules so prescribed were not shown upon the carrier's posted schedules of rates and charges; and application of the rules to three carload shipments of corn carried for complainant resulted in materially increasing the charges above those in force under the carrier's published rate schedules. *Held*, That complainant only had to consult the schedule showing defendant's rates and charges, and that complainant is entitled to recover charges collected on its shipments in excess of those set forth in such schedule.

4. Under judicial interpretation of the statute, shippers and consignees cannot depend for the lawful rate or charge upon what may be quoted by the carrier's agent, but they must be guided by the published rate sheets themselves; and this emphasizes the duty of carriers to make their schedules of rates comply precisely with the mandatory provisions in the statute concerning the contents and publication of such schedules, so that shippers may readily and accurately determine therefrom what rates, and what transportation rules affecting rates, are actually in force for a particular service.
5. The fact that circulars containing rules concerning carload weights had been filed with the Commission, and no opinion had been thereupon expressed by the Commission as to the legality thereof, raises no presumption of approval by the Commission of the rules or regulations therein set forth, or of the manner in which they were established.
6. A carrier which had not provided track scales at stations prescribed a rule or regulation forbidding shippers to load grain in cars beyond a specified weight above the marked capacity under a so-called "penalty" of increased rates on the excess weight. *Held*, That such rule or regulation, if properly established, is not unlawful, provided the increase in charges for excessive weight is not unreasonable, and the margin between such maximum and the carrier's minimum carload weight for grain is so wide that shippers may, without scales, readily comply with both rules.
7. A carrier enforced minimum carload weights for corn and other grain (except oats) which were 4,000 pounds less than the capacity of the car furnished by the carrier; the capacity of the car ordered by the shipper when such order could not be complied with, but this only on application to the superintendent, thus entailing more or less delay and sometimes loss to shippers; the capacity of the car furnished by the carrier on shipments destined to Indianapolis; and a general minimum weight of 28,000 pounds. *Held*, Upon all the facts, that minimum carload weights for corn or other grain which vary with the size of cars furnished by the carrier are unreasonable and unjust and operate to subject complainant and other shippers to unjust discrimination and undue prejudice and disadvantage; and that the carrier should establish a fixed, reasonable and just minimum carload weight for corn and for each other kind of grain.

Albert G. Weber, for complainant.

W. H. Latta, for Indiana, Decatur & Western Ry. Co.

W. W. Ramsey, for Cincinnati, Hamilton & Dayton Ry. Co.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner*:

The complaint in the case first above mentioned, No. 446, alleges that the Indiana, Decatur & Western Railway Company, a common carrier subject to the act to regulate commerce, had

in force over its line for the transportation of corn from Garretts, Ill., to Indianapolis, Ind., a rate of 7 cents per 100 pounds on shipments in carloads, and a rate of 13 cents per 100 pounds on shipments in less than carloads, and a like rate of 7 cents on corn in carloads from Camargo, Ill., to Indianapolis, Ind.; that said rates from Garretts, Ill., were in force on March 18, 1896, when complainant, a corporation, shipped over defendant's road in its car marked I. D. & W., No. 992, a carload of corn weighing 40,865 pounds from Garretts to the Cerealine Manufacturing Company at Indianapolis, on which the aggregate charge for transportation at the rate of 7 cents per 100 pounds should have been \$28.60, but that the defendant did unlawfully, and in violation of §§ 1, 2, 3 and 6 of said act, exact and charge \$32.72 for such transportation, or \$4.12 in excess of the amount which it was lawfully entitled to collect for the service so rendered; that said rate on corn in carloads from Camargo, Ill., to Indianapolis, Ind., was in force on or about April 23, 1896, when complainant shipped over defendant's road in its car No. 394 a carload of corn weighing 28,045 pounds from Camargo to the same consignee at Indianapolis, on which, at said rate, the aggregate transportation charge should have been \$19.63, but that defendant did unlawfully and in violation of the same provisions of said act exact and charge \$22.40 for such transportation, or \$2.77 in excess of the amount it was lawfully entitled to collect for the service rendered.

The complaint in No. 448, the second above entitled proceeding, alleges that the Indianapolis, Decatur & Western Railway Company, and the Cincinnati, Hamilton & Dayton Railway Company, common carriers subject to the act to regulate commerce, had in force, over the line formed by connection of their roads, a rate of 10 cents per 100 pounds for the transportation of corn, carloads, from Lintner, Ill., to Cincinnati, O.; that said rate of 10 cents was in force on or about November 19, 1895, when complainant shipped over said line in C. H. & D. (Cincinnati, Hamilton & Dayton) car No. 10,724 a carload of corn weighing 30,820 pounds from Lintner to the S. W. Weidler Company at Cincinnati, on which, at said rate, the aggregate transportation charge should have been \$30.82; but that said defendants did, unlawfully and in violation of said sections of said act, exact and charge \$42.05 for such transportation, or \$11.83 in excess of the amount

they were lawfully entitled to collect therefor; that complainant is informed and believes that the said rate of 10 cents in force as aforesaid was divided between the defendants in the proportions of $6\frac{1}{2}$ cents to the Indiana, Decatur & Western and $3\frac{1}{2}$ cents to the Cincinnati, Hamilton & Dayton; that the shipment was weighed at Indianapolis and by the railroad scales was held to weigh 31,500 pounds, but that the defendant, the Indiana, Decatur & Western, demanded and collected for its service in hauling said shipment to Indianapolis the sum of \$31.25, or $6\frac{1}{2}$ cents per 100 pounds on a weight of 48,000 pounds, the same being 2,000 pounds less than the marked capacity of the car, and 17,180 pounds in excess of the actual weight of said corn, while the Cincinnati, Hamilton & Dayton received the corn and transported the same on or about the basis of 31,500 pounds, the railroad scales weight, and collected for its service from Indianapolis to Cincinnati the sum of \$10.85.

The complaints in both cases further set forth in substance that the alleged overcharges were made by the defendant, the Indiana, Decatur & Western Railway Company, upon the authority of circulars issued by that carrier providing minimum and maximum carload weights; that the rules prescribed in said circulars are of such character as to be incapable of constant enforcement, or if so enforced that they will subject shippers to unusual delays and resulting loss through the inability of defendant, from lack or scarcity of equipment or other causes, to provide suitable cars for shipments in varying quantities within reasonable time; that the rules also operate to attach fictitious weights to shipments and thereby increase the regular schedule transportation charge to shippers or consignees; that said circulars were issued separately from the schedules showing transportation charges; that they were not thereafter embraced in any newly printed schedules of rates; that the terms of said circulars have not been plainly indicated upon schedules in force on the date when they were issued, but that the Indiana, Decatur & Western Railway Company does, nevertheless, undertake by such circulars to change and determine the aggregate of published charges on shipments of grain, including corn, over its line; that the said circulars, both as to the manner in which they were established and the terms and conditions therein stated, were and are unlawful under provisions of said Act to Regulate Commerce.

The complaints as above outlined present two questions for determination: 1. Were the rules or regulations stated in said circulars, or either of them, put in force or effect in the manner prescribed by the statute? 2. Are the rules or regulations set forth in the circulars in question, or either of them, in violation of the statute?

Answers were duly filed for the Indiana, Decatur & Western, the Cincinnati, Hamilton & Dayton joining in the answer filed in the second above entitled case, No. 448. The Indiana, Decatur & Western Railway Company, answering, admits that the rates in force, the shipments, and the charges made thereon, were as stated in the complaints, and that circulars affecting the amount of charges on the three shipments, by prescribing minimum and maximum weights according to the marked capacity of cars, were enforced by it substantially as alleged. It avers also that the circular in effect and applicable to the shipment from Garretts to Indianapolis warranted it in charging the less than carload rate on the weight of corn in excess of the maximum prescribed for the car used. It claims that section 6 of the Act provides for the publication of these circulars independently of the general tariffs, that all the circulars in question were lawfully in force, and that the rules or regulations therein prescribed were just, reasonable and lawful. The answer specifically avers also that it is necessary for roads having limited mileage and capital to provide regulations which will prevent overloading, thereby promoting the safety of employees and protecting the property of the company, and to adopt and enforce rules which will enable such roads to avoid hauling an unnecessary amount of dead weight in proportion to paying weight; that complainant, having loaded the cars, was able by its own scales or by measurement to avoid loading below the minimum or above the maximum; that it is no hardship for the shipper, if he has a small surplus above the carload, to hold it for the next car he may order and fill; that the cost and maintenance of track scales at small stations would be an expense not warranted by the traffic and beyond the ability of small roads to incur; that the circular fixing minimum weight "does not authorize a charge upon fictitious weights, but simply prevents, by reasonable regulation, the carrying of small weights at carload weights, which would destroy the profit of the busi-

ness." This defendant also states that it has been its custom to furnish cars of any capacity desired and "if the defendant is unable to furnish cars of such capacity then to charge a rate based upon the capacity of the car ordered," and that "this rule and custom was known to all shippers along the line of said defendant's road." This defendant also contends that the circulars are substantially the same as those which have been issued "by permission of the Commission" by the Wabash, Chicago & Eastern Illinois, Illinois Central and other roads in "Central Territory."

It is set up in the joint answer filed in the case No. 448 that the charge made by the Cincinnati, Hamilton & Dayton Railway Company upon the shipment from Lintner to Cincinnati was, "according to actual weight, as charged in the complaint."

As both cases involve identical questions they were, by consent of parties, heard together, and they will be disposed of in one report. Following are our findings of material facts in these proceedings:

FINDINGS OF FACT.

1. The complainant, Suffern, Hunt & Company, is a corporation at Decatur, Illinois, engaged in the purchase of corn and other grain at points in Illinois, and in the shipment thereof in carload lots to points in Indiana, Ohio and other States over the Indiana, Decatur & Western and connecting railways.

2. The defendants are each of them engaged as common carriers in the transportation of grain and other property by railroad through different States of the United States. The terms "I. D. & W." and "C. H. & D.," as hereinafter used, indicate respectively, the defendants, the Indiana, Decatur & Western Railway Company, and Cincinnati, Hamilton & Dayton Railway Company. Said defendants did, as alleged in the complaints, receive and carry for complainant shipments of corn, as follows, to wit:

Forty thousand eight hundred and sixty-five pounds of corn loaded in I. D. & W. car No. 992, marked capacity 30,000 pounds, shipped and carried over the Indiana, Decatur & Western Railway from Garretts, Ill., to Indianapolis, Ind., on or about March 18, 1896, for which a bill of lading was issued specifying the corn to be shelled corn, weight 28,000 pounds subject to correction, and stating the consignee and destination to be "Order

and notify Suffern, Hunt & Co., Indianapolis, Ind." Said bill of lading also contains a number of conditions in the nature of limitations upon the carrier's liability, and the first part of condition No. 11 reads as follows: "Owner or consignee shall pay freight at the rate below stated and all other charges accruing on said property before delivery, and according to weights as ascertained by any carrier hereunder;" and the bill further provides that "upon all the conditions, whether printed or written, herein contained, it is mutually agreed that the rate of freight from Garretts, Ill., to Indianapolis, Ind., is to be, in cents per 100 pounds, if 6th class, 7c." Twenty-eight thousand and forty-five pounds of corn, loaded in I. D. & W. car No. 394, marked capacity 36,000 pounds, shipped and carried over the Indiana, Decatur & Western Railway from Camargo, Ill., to Indianapolis, Ind., on or about April 23, 1896, upon which a bill of lading was issued to complainant containing like specifications with those above mentioned as set forth in the bill of lading issued on the shipment from Garretts, and also naming a rate of 7 cents per 100 pounds. Thirty-one thousand, five hundred pounds of corn (railroad scales weight) loaded in C. H. & D. car No. 10,724, marked capacity 50,000 pounds, shipped and carried over the Indiana, Decatur & Western Railway and the Cincinnati, Hamilton & Dayton Railway, from Lintner, Ill., to Cincinnati, O., on or about November 19, 1895, under a rate then in force of 10 cents per 100 pounds. The bill of lading issued on this shipment was not produced at the hearing.

The rates above stated were those shown for carload lots of corn on tariffs of defendants filed with this Commission, and at the time of the shipment of corn from Garretts to Indianapolis the defendant, the Indiana, Decatur & Western Railway Company, had in effect between these points a less than carload rate on corn of (fourth class) 13 cents per 100 pounds.

3. At the carload rate of 7 cents per 100 pounds, the aggregate transportation charge on the 40,865 pounds of corn from Garretts to Indianapolis would have been \$28.61, but the defendant, the Indiana, Decatur & Western Railway Company, did, notwithstanding its published and filed schedule showing a rate of 7 cents, and the statement of such rate in the bill of lading issued by its agent, exact and charge the sum of \$32.72 as its compen-

sation for such transportation. Such higher charge was made by said defendant under a circular claimed to have been properly in force, and to authorize the application of the less than carload rate of 13 cents to all weight of grain loaded into a car in excess of 4,000 pounds above the marked capacity of the car. Car I. D. & W. No. 992, in which the shipment was loaded, had a marked capacity of 30,000 pounds. The 7-cent, or carload rate, was charged on 34,000 pounds, equal to \$23.80, and the less than carload rate of 13 cents, was applied to 6,865 pounds, the remainder of the carload, amounting to \$8.92, making a total of \$32.72.

The circulars issued by this defendant in relation to minimum and maximum weights for carloads of corn and other grain are on file with the Commission, and were put in evidence at the hearing. The circulars claimed to be in force at the time of the shipment of 40,865 pounds of corn from Garretts, March 18, 1896, were circular No. 553 of the Indiana, Decatur & Western Railway Company, issued November 19, 1895, and therein stated to take effect November 25, 1895, and circular No. 554 of the same company, issued November 29, 1895, and therein stated to take effect December 2, 1895. No. 553 was filed with the Commission on November 21, 1895, and No. 554 was so filed on December 2, 1895.

These circulars contain the following:

Circular No. 553.

Supersedes No. 551.

**MINIMUM WEIGHT OF CARLOAD SHIPMENTS AND OVERLOADING
OF CARS.**

All Agents and Shippers—

A scarcity of cars requires that the **MINIMUM WEIGHT** of all cars loaded with the following commodities on this Railway will be 4,000 pounds less than the **MARKED CAPACITY**, except that in no case will the **MINIMUM WEIGHT** be less than 28,000 pounds on grain, and 30,000 pounds on the other commodities named,

**BRICK, CINDERS, CLAY, FOREST PRODUCTS, GRAIN,
GRAVEL, ICE, IRON, SAND, STONE.**

Shippers must order, through agents, cars of the capacity they desire to load, and agents must note the marked capacity and the minimum weight to be charged for on their **Billing and Bill of Lading**.

When shipments are destined beyond the line of this Railway, and cars are not loaded in accordance with above requirements, this Company will collect for the under weight, from shippers before delivery to connections, at I. D. & W. Ry. local rate. The minimums of connecting lines to apply after delivery to connections.

All concerned will be governed by the Central Traffic and Trunk Line Associations rule which permits cars to be loaded to a limit of only 4,000 pounds in excess of their marked capacity.

When agents are aware that cars are overloaded they will refuse to issue Bills of Lading until the weight has been reduced to the allowance of 4,000 pounds above the marked capacity.

When cars are transferred in transit, to reduce the weight for the purpose of safety, the entire expense of such service must be paid by the owner of the property.

Agents will see that all concerned are fully advised.

Circular No. 554.

PENALTY FOR OVERLOADING CARS.

All Agents and Shippers—

Some shippers are disregarding the rule that cars shall not be loaded more than 4,000 pounds above marked capacity, thus endangering the lives of employees and the property of this Company.

On and after Dec. 2d, 1895, Fourth (4th) class rate will be charged on the excess (above 4,000 lbs.), and cars will be retained in the possession of this Company until the excess is paid by shipper.

Circular No. 554 remained in effect until superseded by Circular No. 557 on April 20, 1896, but the "penalty" of fourth-class rates on excess weight above 4,000 pounds added to the marked capacity of the car was repeated in and not changed by No. 557. That circular, so far as the Commission is advised, is still claimed to be in force. Circular No. 553 was instructive merely as to the maximum carload weight, and prescribed no "penalty" for overloading, but No. 554 did provide a "penalty" as above set out, and this circular was posted and filed prior to March 18, 1896, when the carload shipment from Garretts was made.

4. At the carload rate of 7 cents per 100 pounds, the aggregate transportation charge on the 28,045 pounds of corn from Camargo to Indianapolis would have been \$19.63, but the defendant, the

Indiana, Decatur & Western Railway Company did, notwithstanding its published and filed schedule showing a rate of 7 cents and the statement of such rate in the bill of lading issued by its agent, exact and charge the sum of \$22.40 as its compensation for such transportation. This higher rate was exacted by said defendant upon the authority of its circular No. 553 above set forth, which it claimed was properly in force on April 23, 1896, the date of the shipment, and which fixed the minimum carload weight at 4,000 pounds less than the marked capacity of the car, but not less than 28,000 pounds. I. D. & W. car No. 394, in which the shipment was loaded, had a marked capacity of 36,000 pounds, and under such circular the 7 cent rate in force was applied on 32,000 pounds, instead of 28,045 pounds actual weight, amounting to \$22.40.

5. The carload rate of 10 cents per 100 pounds applied on the 31,500 pounds of corn shipped from Lintner to Cincinnati on or about November 19, 1895 (complainant claims weight to have been 30,820 pounds), would have made an aggregate transportation charge of \$31.50, but the defendants, the Indiana, Decatur & Western Railway Company and the Cincinnati, Hamilton & Dayton Railway Company, did, notwithstanding said tariff rate of 10 cents per 100 pounds and said weight, exact and charge the sum of \$42.05 as total compensation for such transportation. The defendant, the Cincinnati, Hamilton & Dayton Railway Company, did not participate in the excess revenue collected over the amount produced by the 10 cent rate applied to the 31,500 pounds actual weight; but the defendant, the Indiana, Decatur & Western, increased its own compensation by enforcing on said shipment the provisions of its circular No. 551, which reads substantially the same as its later issue, No. 553, except that the minimum weight for grain provided in No. 551 was 2,000 pounds less than the marked capacity of the car, but not less than 28,000 pounds. C. H. & D. car No. 10,724, in which the shipment was loaded, had a marked capacity of 50,000 pounds, and the Indiana, Decatur & Western, under its circular No. 551, charged its proportion out of the 10 cent rate on 48,000 pounds, thereby increasing the aggregate charge from \$31.50 to \$42.05, the amount collected for the total service rendered.

6. On May 11, 1896, the Indiana, Decatur & Western issued

its Circular No. 559 amending Circular No. 553, providing that when, on account of dimensions of cars, it is found impossible to load oats in accordance with Circular No. 553,—“The minimum weight will be 28,000 pounds, and only the actual weight will be charged for, if in excess of 28,000 pounds; provided such cars are loaded to full capacity.” This was supplemented by an amendment to No. 559 on July 17, which reads as follows: “Owing to the light weight of new oats (crop of 1896), the minimum weight of new oats, carloads, as shown in G. F. D. Circulars Nos. 553 and 559, will be waived. During the season of 1896 the minimum weight of new oats, carloads, will be 24,000 pounds and only the actual weight will be charged for, if in excess of 24,000 pounds; provided such cars are loaded to full capacity.” The proviso to No. 559 and its amendment—“provided such cars are loaded to full capacity”—renders them obscure. Circular No. 559, issued May 11 and taking effect at once, was not filed with the Commission until May 13, and the amendment to that Circular issued July 17, 1896, taking effect at once, was not filed with the Commission until July 20.

Circular No. 559 also contains the following:

“Agents will require shippers to make a written order for cars of the capacity they desire to load, and will in every instance advise the Transportation Department of capacity of cars wanted as well as the destination of same and keep shippers' order on file for reference. When cars cannot be furnished of the capacity desired agents can ask superintendent's office for permission to load cars of greater capacity, if such can be obtained, in which case the minimum weight will be the capacity of the car ordered, but in no case less than 28,000 lbs.

“This applies to all commodities named in G. F. D. Circular No. 553.”

7. These circulars have the effect of changing or determining the compensation which the carrier will charge for the transportation of a given quantity of grain, and their enforcement resulted in these cases in increasing the aggregate charge authorized by the rate stated in separately published and filed schedules of the carrier—in other words, the application of these circulars to the shipments in question increased the carrier's published transportation charge. On weight over the maximum so prescribed in the circulars the less than carload rate is to be charged upon the excess weight, and when the actual carload weight is below

the special minimum weight so fixed in the circulars, the carload rate is to be applied on such special minimum weight instead of the actual weight. The contents of these circulars were not afterwards shown on newly printed schedules of the carrier's rates and charges, nor were they indicated upon rate schedules in force at the time the circulars were stated to take effect. The circulars were merely posted as issued, and filed with the Commission. Circular No. 553 reduced the special minimum carload weight from 2,000 pounds prescribed in No. 551 to 4,000 pounds less than the marked capacity of the car. Having been issued November 19, 1895, to take effect November 25 and been duly posted, more than the three days' public notice of reduction in rates required by law was given. But Circular No. 554, providing the application of the less than carload rate on excess weight over the prescribed maximum as a "penalty" for overloading cars, was issued November 29, 1895, to take effect December 2, and the ten days' public notice required by the statute for advance in rates was not given.

8. Indiana, Decatur & Western Tariff, "I. S. T. No. 419," became effective November 23, 1893, and, with supplements in force up to December 5, 1895, prescribed carload rates on grain and grain products, minimum weight 28,000 pounds, and contained no reference to any separate circular concerning carload weights. On December 10, 1895, Supplement No. 7 to this tariff came into effect and provided for "minimum weight as per G. F. D. Circular No. 553." This supplement was withdrawn and cancelled, however, on January 14, 1896, by Supplement No. 8, which provided that "rates as shown in original tariff will apply," thus bringing I. S. T. No. 419 again in force. That schedule remained in effect until April 27, 1896, when the company's tariff, I. C. C. No. 23, superseding its I. S. T. No. 419, was established. This tariff, with supplements, is still in force, and it provides that "the minimum carload on grain and grain products will be the marked capacity of car, but not less than 28,000 lbs." No reference is made in the tariff to any of these circulars.

The rate of 10 cents per 100 pounds in force November 19, 1895, the date of the shipment of 31,500 pounds of corn from Lintner to Cincinnati over both of the defendant roads, was

shown on Indiana, Decatur & Western Joint Freight Tariff No. 485, effective February 20, 1895, to which the Cincinnati, Hamilton & Dayton was a party. This tariff also prescribed a minimum weight on grain and grain products of 28,000 lbs., contained no reference to any circular of the Indiana, Decatur & Western or any other carrier, and remained in force until January 4, 1897, when it was superseded by I. C. C. No. 75 (Joint Freight Tariff No. 617), issued December 30, 1896, which, with supplements, contains present rates over such through line to Cincinnati. The present Tariff No. 75 does refer to circulars as follows: "Minimum weight of grain as per G. F. D. Circulars Nos. 553 and 559 or subsequent issues. Grain products, 28,000 lbs. Hay, 20,000 lbs." The minimum carload weight prescribed for grain in the "Official Classification," which is used by carriers east of the Mississippi and north of the Ohio Rivers, is 24,000 pounds. This is also the minimum carload weight fixed by the Railroad Commission of Illinois.

9. The Indiana, Decatur & Western Railway extends over a distance of 153 miles from Decatur, Ill., to Indianapolis, Ind. It has about 400 freight cars varying in capacity from 30,000 to 60,000 pounds. One freight train is run each way daily, with extras as business may require. The Company has track scales only at its terminal stations. These scales cost about \$1,000 each, and the yearly expense of maintenance is about \$50. They may have to be renewed after a period of five or more years. Lintner, Garretts, and Camargo are small towns ranging in population, with other stations from which complainant ships grain, from 1,800 to 2,500 persons. The freight charges on shipments from those three points for the six months ending June 30, 1896, were: Lintner, \$2,481.26; Garretts, \$4,182.16; and Camargo, \$1,486.57. The company is in poor financial condition. For the months of July and August, 1896, 54 cars shipped from various points on the Indiana, Decatur & Western were loaded in excess of the maximum of 4,000 pounds above the marked car capacity, and in each instance the company collected its fourth class or less than carload rate on such excess weight. In September, 1895, a train was derailed and ditched on this road by the breaking down of a car which had been overloaded with grain, causing considerable expense to the carrier and endangering the

lives of the train employees. Notwithstanding repeated requests made to shippers, the overloading practice continued, and finally the company issued its Circular No. 554, and subsequently its No. 557, providing for less than carload rates on excess weight above the prescribed maximum carload. Out of 127 cars loaded and shipped by complainant to one consignee between January 14 and September 18, 1896, only six of the cars were not loaded in accordance with the rules of the company concerning minimum and maximum weights. The car containing complainant's shipment from Garretts was not intentionally overloaded. The corn was weighed at Garretts, where complainant has a small elevator and automatic scales, but the scales failed to register properly and this caused the overloading. The company's agent did not, as required by the circulars, note the marked capacity of the car on the bill of lading for either of the shipments in question. There has also been underloading of cars by shippers on this road. It has happened where two cars, one large and the other small, have been furnished to a grain shipper by this carrier, the car of greater capacity has been loaded with a quantity which would have filled the small car, while the load put into the small car considerably exceeded its marked capacity. This, however, may result from loading the small car first, and failure of the farmer to deliver sufficient to constitute a load for the other car. Cars of much greater capacity than were required for shipments have also been ordered by shippers, and the carrier, to promote the proper distribution of its car equipment suitable for grain carriage, and obtain a fair paying load in proportion to the size of the car ordered, furnished and used, finally established the scale of minimum carload weights for grain and other commodities named in Circular No. 553, whereby the minimum was fixed at 4,000 pounds below the car capacity. The company has reduced rates on corn from its stations to Indianapolis and Cincinnati and other points since the complaint was filed.

10. Under the circulars set forth in former findings herein, the shipper of grain, except oats, must load up to within 4,000 pounds of the car capacity, and he may not, without paying substantially double rates on the excess as a "penalty," load above 4,000 pounds over the car capacity. The rule as to ordering cars of desired size, and loading them up to 4,000 pounds less than the

marked capacity, may be followed by shippers with less trouble or inconvenience when the shipment is made from an elevator, where the different grades of corn can be kept apart and stored in considerable quantities. But shippers of corn from stations on the Indiana, Decatur & Western, not provided with an elevator, are considerably embarrassed by this regulation. There are three grades of corn, white, yellow, and mixed, usually differing in value in the order named, and while a shipper may have enough of one grade to load a car over the lowest minimum of 28,000 pounds, the quantity is often insufficient to load an average car of 40,000 pounds capacity, according to defendant's rule. This frequently happens where the shipper has loaded one car under the rule, and has a remaining quantity—more than 28,000 pounds—but not enough to load another car, which the company has supplied, within 4,000 pounds of its capacity; and such remaining quantity cannot always be stored, or if it can be, then there is a storage charge. Thus while the shipper may have 56,000 pounds of corn to ship in two carloads, he cannot, under the rule, do so at the carload rate, unless the two cars furnished by defendant are of the right capacity. The farmer agrees to sell an estimated quantity of corn to the buyer and to deliver it at the station within a definite time. At the time of such sale the corn may be cribbed (unshelled) at the farm. The buyer or shipper thereupon asks for a car or cars of the capacity suited to his customer's order and to the quantity of corn so purchased, but upon delivery and shelling of the corn, it turns out that the farmer has overestimated the number of bushels, and the result is that while the quantity ready for shipment is more than a carload of 28,000 pounds, it is not a load for a car of much greater capacity under defendant's rule. A car containing 500 bushels of corn is considered a carload among grain dealers and upon the grain exchanges. A carload in the eastern trade ranges, it is testified, from 500 to 700 bushels, averaging about 600 bushels. 500 bushels of corn (56 pounds per bushel) weighs 28,000 pounds, and the weight of 600 bushels is about 33,300 pounds.

A buyer filling an order for two carloads, which are intended to be resold by consignee in carloads to different customers, must load and ship accordingly, and if he sends in either car a quantity greater than is called for in the order he must, particularly

on a declining market, either submit to cancellation of the order or a part of it, or stand some of the loss measured by the difference in price. The president of the complaining corporation testified: "You cannot always tell exactly what size cars you want; the farmer cannot always tell exactly how much corn he has to deliver. He can tell approximately, and we can order cars approximately. For instance, if a farmer should sell me 2,000 bushels of corn and I ordered four cars at 500 bushels each, I might load 1,500 bushels in three cars, and might start the fourth car, and might get 400 bushels or 450 bushels loaded into it, and then the farmer would discover that he did not have enough to fill that car. Then I would have to unload that car and put it in storage or else ship it out and pay a penalty, and if I unloaded it would cost $\frac{1}{2}$ cent for transfer, and if I hold it a few days, my contract might expire, and on a declining market I might lose the benefit of that sale, and rather than do that it would be better for me to ship it out and pay the penalty. I would have to lose either way." In reply to a question as to the degree of diligence with which the railroad company complies with an order for a car of desired capacity, the same witness said: "From the best information I have, they attempt to give the kind of car ordered, and if, after a day or two, they find they cannot secure the kind you order, then they will permit you to load the car there—even if it is a 50,000-pound car, they allow you to load 30,000 pounds without penalty. They usually wait a day or two, sometimes three days, before they permit you to load that 50,000-pound car with 30,000 pounds." "If we have corn sold for ten days' shipment and it is about the eighth or ninth day, and the market has declined in the meantime 2 or 3 cents a bushel, it will very frequently lose us the benefit of our sale. The party does not hold himself responsible to take the grain on a declining market after the expiration of the time."

Shippers like complainant undertake to handle corn on a margin of about $\frac{1}{2}$ cent per bushel.

A car of 60,000 pounds' capacity must, under defendant's rule, be loaded up to 56,000 pounds, about 1,000 bushels, while a minimum carload of 28,000 pounds only amounts to about 500 bushels. One hundred carloads of grain for export is understood to mean about 500 bushels per car, and for that trade the grain

could be loaded in 50 cars of 60,000 pounds with little or no inconvenience to the shipper. The large mills also generally take large carloads. Sometimes the marked car capacity is a greater number of pounds than can be shipped. Oats, being lighter, require more space than corn or wheat, and wheat is somewhat heavier than corn. The marked capacity of a car necessarily indicates the weight, and not the bulk; and it follows that with the lighter articles of freight it is not always practicable to load a car up to its marked weight capacity. This is true with defendants' grain cars loaded with oats, and it provided by Circular 550 a special minimum weight for this commodity. Cars of the larger size cost but little more than those having the smaller capacity. The capacity of cars has been increased in the last thirty years from 10 to 30 tons. Nearly all railways have on hand old cars varying in capacity from 10 or 12 tons upwards, and they are therefore now able to furnish cars of different sizes; but most of the new cars are of the larger capacity, and under this practice the number of cars of small capacity must diminish yearly.

11. Some other roads in Illinois have also adopted regulations requiring cars to be loaded within 2,000 or 4,000 pounds of the marked capacity, but the testimony was that the rules were not enforced or were relaxed upon sufficient excuse made by the shipper; and that such a rule is not in effect on roads generally. The Chicago & Eastern Illinois has such a rule in force, but a quantity remaining after loading one car, which is over the general minimum, but not equal to the special car minimum, is charged for at actual weight, and if "farmers could not get in," on account of muddy roads, is stated as among other sufficient reasons for deviating from the rule. Referring to the average of but 6 improperly loaded cars out of 127 shipped by complainant, the general freight agent of the Chicago & Eastern Illinois road testified that "if that was the average record on my road, I would consider the shipper entitled to relief;" and in reply to a question by defendant's counsel as to whether something ought to be done when a shipper loaded a 40,000-pound car with 60,000 pounds of corn, the same witness said: "I think we would require a new agent at that station if he allowed that car to go through." It does not appear that other roads in the

same section of country, or that roads generally, enforce a penalty of less than carload rates on weight of grain placed in a car over a maximum quantity prescribed. This Commission has never granted permission to any carrier to adopt and enforce circulars of the character herein involved. Such permission is alleged in defendant's answer, but was not proved at the hearing.

CONCLUSIONS.

1. Were the rules and regulations contained in circulars issued by the Indiana, Decatur & Western Railway Company established in compliance with the requirements of the Act to Regulate Commerce?

The 6th section of the Act provides that every common carrier subject to its provisions shall keep open to public inspection schedules showing the rates and fares and charges which it has established and which are in force at the time; that the "schedules posted as aforesaid by any common carrier shall contain the classification of freight in force, and shall also *state separately* the terminal charges, and any *rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges;*" that such schedules shall be . . . posted in two public and conspicuous places in every depot, station, or office of such carrier where passengers or freight, respectively, are received for transportation, *in such form* that they shall be accessible to the public and can be *conveniently inspected*.

The circulars which are the subject of this inquiry plainly come under that provision, above cited, which requires that the schedules shall also *state separately* the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges. The defendant apparently contends that the word "*separately*" authorizes the issuance of circulars containing rules or regulations independently of and without reference to the rate sheets. In that part of section 6, the Act specifies what the schedules of rates, fares, and charges shall contain and what they shall state, but separate schedules are not thereby authorized for rules and regulations, nor for terminal charges. All that "*separately*" can be construed to mean in the connection in

which it is used is that the transportation charges and the terminal charges and any rules or regulations, etc., shall be separately stated *on* the schedules of rates, fares, and charges. Whether a rule or regulation concerning transportation can lawfully be established by the issuance of a schedule or document which neither prescribes rates, fares, or charges, nor refers to any rate or fare schedule, depends upon the nature of the rule or regulation. If rules or regulations "in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, fares, and charges" they must be stated *upon* the schedules of such rates, fares, and charges. This is the plain reading of the statute, and to any one at all familiar with the large number of rate sheets in force for interstate transportation from the great majority of railroad stations the necessity of connecting the rate with any rule or regulation affecting that rate is obvious. The rules and regulations prescribed in the circulars involved in these cases, although they changed and determined rates or charges, as shown in the findings, were not stated upon the schedules of the Indiana, Decatur & Western Railway showing rates on corn in carloads from Garretts or Camargo to Indianapolis, or from Lintner to Cincinnati, which were in effect at the times complainant's shipments between those points were made.

Having provided for the establishment of schedules of rates, fares, and charges containing the classification of freight and stating any terminal charges and rules and regulations changing, affecting, or determining the rates or charges, the statute then requires the carrier to give ten days' public notice of an advance, and three days' public notice of a reduction, in rates, fares, and charges, plainly stating therein the *changes proposed to be made in the schedules then in force*, "and when the new rates will go into effect, and the *proposed changes shall be shown by printing new schedules or shall be plainly indicated upon the schedules in force at the time.*" As shown in the findings, the circulars issued by the Indiana, Decatur & Western Railway Company were well calculated to change the aggregate charges of that carrier on carload shipments of corn, and some of them did so change and increase its aggregate charge or a part thereof on each of the carload shipments involved in these cases. When issued, these circulars constituted defective notices of proposed changes in

defendant's schedules of carload grain charges, advances or reductions as their terms disclosed. They did not purport to directly or specifically change a rate or fare, but they did, if enforced, directly change defendant's "charges" on carload shipments, and by rules concerning carload weights they indirectly affected the specific grain rates mentioned in the existing schedules. These circulars did not purport to amend or be supplements to an existing rate schedule, nor did they even refer to such schedule. No new rate schedules, nor even supplements to the old, containing the changes stated in the circulars, were printed, nor were the contents of the circulars plainly, or otherwise, indicated on the existing affected schedules of rates and charges which were in force at the time of complainant's shipments. Under the law, complainant only had to consult the schedule showing defendant's rates and charges, and it, the complainant, was not bound to hunt through the defendant's posted files at the shipping stations for rules or regulations affecting or determining the transportation charges which were not stated or plainly indicated on the rate sheet itself.

The findings show that the circulars and rate sheets of the Indiana, Decatur & Western Railway Company affecting the shipments in question very materially conflicted with each other. Thus, on November 19, 1895, when the carload shipment from Lintner to Cincinnati was made, the joint tariff of the Indiana, Decatur & Western and Cincinnati, Hamilton & Dayton Railways, in force between those points, named a rate of 10 cents per 100 pounds on corn in carloads of a minimum weight of 28,000 pounds. The Indiana, Decatur & Western had also issued, to take effect November 10, 1895, its circular No. 551 prescribing a minimum weight of grain of 2,000 pounds less than the marked capacity of the car, but in no case less than 28,000 pounds. Neither the tariff nor the circular referred to the other. By the rate sheet complainant's carload from Lintner of 31,500 pounds was over the minimum weight and entitled to a rate of 10 cents per 100 pounds and a carload charge of \$31.50 for the whole distance to Cincinnati. Under the circular which the Indiana, Decatur & Western Railway Company enforced, its compensation based on 48,000 pounds (2,000 pounds less than the car capacity) was increased, while that of the Cincinnati, Hamilton

& Dayton was not, so that the total charge came to \$42.05. Although such circular may have been duly posted at the shipping station and filed with this Commission, that rule or regulation for a minimum weight of 2,000 pounds less than the car capacity was in conflict with defendant's existing joint tariff, and had not been lawfully established, and the excess charged on complainant's shipments over \$31.50, namely, \$10.55, was unlawfully exacted.

On March 18, 1896, when complainant's shipment from Garretts to Indianapolis was made, the tariff of the Indiana, Decatur & Western Railway then in force was its "I. S. T. No. 419," which prescribed a rate of 7 cents per 100 pounds on corn in carloads of a minimum weight of 28,000 pounds and no maximum carload weight was therein specified. The Indiana, Decatur & Western Railway had also issued, to take effect December 2, 1895, its Circular No. 554, imposing on the overloading of cars beyond 4,000 pounds above the marked capacity a "penalty" of fourth class, or nearly double, rates, on the excess over such maximum carload. Neither the tariff nor the circular referred to the other. By the rate sheet complainant's carload from Garretts of 40,865 pounds was over the minimum weight, and for aught therein stated it was a proper carload, and entitled to a rate of 7 cents per 100 pounds and a carload charge of \$28.61. Under the circular which the Indiana, Decatur & Western Railway Company enforced, its compensation was increased to \$32.72 by exacting for an excess of 6,865 pounds, above the maximum carload weight prescribed in the circular, a fourth-class or less than carload rate of 13 cents per 100 pounds. That rule or regulation for a carload weight not exceeding 4,000 pounds above the marked capacity of the car used for the shipment was in conflict with the then existing rate schedule of the Indiana, Decatur & Western Railway Company, and had not been lawfully established, and the excess charged on complainant's shipment over \$28.61, namely, \$4.11, was unlawfully exacted.

On April 23, 1896, when complainant's shipment from Camargo to Indianapolis was made, the tariff of the Indiana, Decatur & Western, its "I. S. T. No. 419" above mentioned, was still in force, and prescribed a rate of 7 cents per 100 pounds

between those points on corn in carloads of a minimum weight of 28,000 pounds. The Indiana, Decatur & Western had also issued, to take effect November 25, 1895, its Circular No. 553 (superseding its 551 above mentioned in connection with the Lintner shipment) and prescribing a minimum carload weight of grain of 4,000 pounds less than the marked capacity of cars. Neither the tariff nor the circular referred to the other. By the rate sheet complainant's shipment from Camargo to Indianapolis of 28,045 pounds was over the minimum weight and entitled to a rate of 7 cents per 100 pounds and a carload charge of \$19.63. Under the circular, which the Indiana, Decatur & Western enforced, its compensation was increased to \$22.40 by exacting the carload rate on 32,000 pounds (4,000 pounds less than the marked capacity of the car). That rule or regulation for a minimum carload weight of 4,000 pounds less than the car capacity was in conflict with the then existing rate schedule of the Indiana, Decatur & Western Railway, and had not been lawfully established, and the excess charge on complainant's shipment over \$19.63, namely, \$2.77, was unlawfully exacted.

We do not overlook the fact, shown in the findings, that Supplement No. 7 to Tariff "I. S. T. No. 419," effective December 10, 1895, reduced the rate from Camargo and other stations from 7 to 6 cents, *and fixed the minimum weight as per Circular No. 553*. That supplement, however, was withdrawn and cancelled January 14, 1896, by Supplement No. 8, which provided "*that rates shown in original tariff will apply*," and that "*previous supplements are hereby cancelled*." The complainant might very well have been led by Supplement No. 7 and its withdrawal in Supplement No. 8, which restored the old rate and cancelled previous supplements, to suppose that Circular No. 553, specifically mentioned in the cancelled Supplement No. 7, was no longer in force. We repeat, that at the date of the Camargo shipment the rate schedule in force permitted a shipment of 28,045 pounds as a carload at 7 cents per 100 pounds from that point to Indianapolis, and that Circular No. 553, if intended to be in effect, had not been properly established as to the minimum weight rule and was in conflict with the governing rate schedule.

If the rules and regulations in the circulars above mentioned

were not properly in effect, notwithstanding the circulars were posted and filed, it is immaterial to consider whether the circulars, as notices of advance or reduction in rates or charges, were posted for the time required by law. The defect in establishing these rules or regulations affecting rates or charges lies in the fact that the circulars did not purport to amend the rate schedules, and the rules or regulations were not shown upon the rate schedules in force at the time of the shipments as the law requires. The defendant, the Indiana, Decatur & Western Railway Company, has apparently given some consideration to this requirement of the statute, as its later Local Tariff No. 566 (I. C. C. No. 23) provides on the same sheet with the rates that the minimum weight of grain "will be the marked capacity of car, but not less than 28,000 lbs.," and its later Joint Tariff No. 617 (I. C. C. No. 75), with the Cincinnati, Hamilton & Dayton and others, fixes rates from its stations to Cincinnati and other points and a minimum carload weight for grain as per Circulars Nos. 553 and 559, or subsequent issues. It also appears by these later tariffs that while Circulars Nos. 553 and 559 are enforced in the Joint Tariff to Cincinnati and other points, so that the minimum carload of corn is 4,000 pounds less than the car capacity (unless modified under conditions stated in 559), the Local Tariff to Indianapolis supersedes both Circulars Nos. 553 and 559 as to that point of destination, and makes the minimum carload weight for grain on such transportation *the marked capacity of the car*. The different minimum weights provided for in these two tariffs and the fact that Circular No. 559 really modifies No. 553, so that the 4,000 pounds less than the car capacity rule can, on application to the superintendent, be suspended, if a car of the size ordered cannot be furnished (and the minimum will then be the capacity of the car ordered), make it somewhat difficult to tell just what carload weight of grain is now required of shippers by this carrier. It is plain, however, that under the law the minimum weight in force by properly established rate schedule on grain from Indiana, Decatur & Western stations to Indianapolis is the marked capacity of the car, but not less than 28,000 pounds. As to grain shipped from those stations to Cincinnati and other points named in Joint Tariff No. 617 (I. C. C. No. 75), we doubt whether the provision in that tariff for a minimum weight of

grain "as per G. F. D. Circulars Nos. 553 and 559, or subsequent issues" is sufficient indication on the rate schedule of what minimum carload weight is required, first, because "Circulars Nos. 553 and 559 or subsequent issues" is indefinite, and second, because Circulars Nos. 553 and 559 have never, for reasons stated above, been lawfully made effective. The law requires that the minimum weight rule or regulation itself shall be stated on the tariff or schedule of rates, if it is to be made effective, and that changes in such minimum weight, thereby advancing or reducing the charge, shall be shown by printing new schedules or plainly indicating *such changes* upon the existing rate schedule. Where slight changes are made in an existing schedule showing numerous rates, the printing of a supplement or amendment to the schedule showing such changes has been regarded as substantial compliance with the statute, but we have in different cases called attention to the uncertainty and confusion caused by the issuance of a considerable number of supplements or amendments to a rate sheet, and have pointed out that such practice is not in conformity with the law. *Colorado Fuel & I. Co. v. Southern Pac. Co.* 6 Inters. Com. Rep. 488; *Johnston-Larimer Dry Goods Co. v. Atchison, T. & S. F. R. Co.* 6 Inters. Com. Rep. 568.

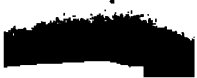
Profits of shippers or consignees are diminished by ultimately charging, under an involved set of rate schedules or according to some separate circular, a higher rate than was thought to be in effect at the place of shipment, and commercial transactions may, through such increase, even result in actual loss to one of the parties; the consignee may have resold the freight before receiving it, relying upon the terms of his own purchase, including the stated cost of transportation. Nevertheless, under the law, as construed by the United States Supreme Court in *Gulf, C. & S. F. R. Co. v. Hefley*, 158 U. S. 98, 39 L. ed. 910, carriers are not only entitled to exact their proper established rates, but they are bound to do so, and a lower rate stated in the bill of lading issued by the carrier to the shipper will not be enforced. Shippers and consignees cannot, therefore, depend for the lawful rate or charge upon what may be quoted by the carrier's agent, but they must be guided by the published rate sheets themselves. Such interpretation of the law emphasizes the legal duty of the carriers to make their schedules of rates comply precisely with the manda-

tory provisions in the statute concerning the contents and publication of such schedules, in order that shippers may, upon inspection, be enabled to readily and accurately determine what rates, and what transportation rules affecting rates, are actually in force for any particular service.

The fact that these circulars have been filed by this defendant with the Commission, and that others containing similar provisions have been filed by other roads, and that this Commission has not heretofore expressed an opinion upon the legality thereof, does not, as apparently claimed in defendant's answer, raise any presumption of approval by this Commission of the rules or regulations therein set forth or of the manner in which they have been established. (*San Bernardino Board of Trade v. Atchison, T. & S. F. R. Co.* 4 I. C. C. Rep. 114, 3 Inters. Com. Rep. 138.)

2. Are the rules and regulations prescribed in the circulars issued by the Indiana, Decatur & Western Railway Company in violation of the Act to Regulate Commerce?

A properly established rule or regulation forbidding shippers to load grain cars beyond a specified weight above the marked car capacity does not appear unreasonable in itself, nor does a reasonable increase above carload rates on excess loaded by shippers over such maximum weight seem unlawful. The carrier has a right to thus reasonably protect its equipment from damage, and it is its duty to prevent, by proper regulation, any accident to train employees. It is true that the station agent should inform himself whether cars have been overloaded by shippers before billing out the shipment, and that he should not send out an overloaded car, but where freight scales have not been provided at the station, it is not always possible for the agent to ascertain whether the maximum weight has been exceeded. He may, perhaps, know when a grain car has been greatly overloaded,—as, for instance, the loading of 60,000 pounds of corn in a car marked at 40,000 pounds capacity,—but he cannot ordinarily be certain, without exact measurement and proper computation, that the rule has been violated when the maximum load has only been slightly exceeded. While it is the duty of the agent not to bill out a car which is clearly overloaded, and the defendant makes this part of one of its rules, the shipper who does the loading should also endeavor to come within the utmost weight allowed.



Those who load the cars are generally able to estimate approximately the quantity of grain put in them. The different kinds of grain have a recognized weight per bushel, and the capacity of bins or other receptacles used by shippers prior to or during the process of loading also enable them to determine the carload quantity with more or less accuracy. We are not convinced in these cases that it is the duty of the carrier to provide scales capable of weighing carloads of freight at every station on its line. It seems that complainant, or its agent, when loading the car at Garretts, depended upon automatic scales of its own which worked defectively, and that the overloading was accidental; but that fact should not be given weight in considering the legality of a "penalty" imposed upon shippers generally for overloading grain cars. A maximum carload weight with reasonable increase in rate on the excess loaded is not unlawful if sufficient difference is preserved between such maximum and the minimum carload weight allowed by the carrier. This ruling applies only to grain, which is the kind of traffic under consideration, and is not to be understood to refer to the other commodities named in defendant's Circular No. 553, set forth in full in the third finding.

The defendant's rules concerning the minimum carload weight of corn and other grain present a different question. We understand the defendant's reason for issuing these circulars is to insure the loading of cars to something like their capacity, so that hauling unnecessary non-revenue-paying weight may be avoided, and if it does this without subjecting shippers to undue hardships, it is not acting unlawfully. But the facts do not seem to justify defendant's minimum carload rules for grain. That 500 bushels of corn—28,000 pounds—is considered a carload among buyers and sellers of grain would seem to indicate that the carrier's general or lowest minimum of 28,000 pounds is the proper minimum, for the carrier must very largely depend for what constitutes a carload upon what will be purchased by dealers as a carload. It is true that 500 or 600 bushels is not necessarily the carload when grain is sold to large millers, but it is for small millers who either do not wish or cannot afford to handle the larger carload quantity; and carload shipments to dealers who reconsign must correspond in quantity to the amount ordered. A high minimum carload weight for grain also tends to discourage

track buying and to augment the business which goes to elevators; and again, with ever so much disposition to load cars up to their capacity, the shipper or buyer very frequently cannot tell in advance, when ordering the car, how much corn of one grade he will have to load. The grain is bought and shipped largely on time orders, and buying for delivery within a stated period and at the same time ordering the car, are practices in the trade. The state of the market is another consideration. With declining market prices, a carload in excess of consignee's order is probably as bad for the shipper as a car loaded far beyond its capacity is for the carrier; the latter is only liable to possible damage, but the shipper must, in that state of the market, certainly lose the difference in price, and the whole shipment may be thrown on his hands at some distant destination. The fact that the new cars of the company and of most carriers are now of the larger sizes, ranging from about 40,000 pounds upwards, indicates that the carrier must eventually run out of small cars. The larger cars are bought by the carrier to enable it to haul more load-weight with proportionally less dead weight, and doubtless also to permit it to reduce rates when the price of grain requires low transportation charges, and defendant's rates are now lower than they were at the time of complaint; but such considerations hardly warrant it in compelling shippers to increase their minimum carload shipments while the general demand is still for the smaller carload. Enforcing a rule for a high minimum grain carload under present commercial conditions tends also to throw grain business in the hands of large operators and to unduly prejudice the smaller dealers.

This carrier has now four minimum carload weights for corn, as follows: The capacity of the car on shipments to Indianapolis; 4,000 pounds less than car capacity on shipments to Cincinnati and other points; the capacity of the car ordered when such order cannot be complied with, but this only on application to the superintendent, thus entailing more or less delay and at times loss to shippers; a general minimum of 28,000 pounds. The first three minimum weights are based upon dimensions of the carrier's cars; the last only is based upon the traffic, the way it is handled at stations, and the recognized course of commercial dealing. Besides these, the company has, on account of light

weight in 1896, fixed a special minimum of 24,000 pounds for oats. Under the contention of the carrier that the load for a car should not rightfully *go beyond* its marked capacity (and that 4,000 pounds above such capacity is a generous *maximum* allowance), its prescribed minimum weight for Indianapolis shipments of "the capacity of the car," brings its maximum and minimum carload quantities decidedly close together, and the two regulations tend strongly towards an arbitrary carload quantity, below or above which the shipper could not go without incurring some "penalty." While the defendant company has these different minimum weights for grain it maintains only a single standard of 28,000 pounds for grain products. The carload minimum for non-excepted freight articles is 24,000 pounds in the Official Classification, which is used by this carrier, and this is also the minimum carload weight fixed by the Railroad Commission of Illinois, through which State a part of defendant's railway extends. Other roads in the same section of country do not enforce a sliding scale of minimum weights depending upon capacity of cars furnished by themselves. One of them, as shown in the findings, disregards a like rule, which it claims to have in effect, whenever it thinks the shipper is entitled to relief. Rules for minimum weights which cannot be invariably enforced, or which, if so enforced, are plainly prejudicial to any class of shippers, are not to be regarded as lawful. The minimum-weight rule under which the actual weight of complainant's carload shipment to Cincinnati was fictitiously increased more than 50 per cent for the purpose of basing transportation charges thereon is clearly unreasonable. It would manifestly be unjust also, under any rule as to minimum loads or otherwise, to charge for weight not carried in a car which the carrier has furnished and in which on account of its size and the nature and bulk of the freight the required minimum quantity cannot be loaded. If applied on traffic generally, defendant's different and uncertain minimum carload weights would inevitably confuse and puzzle shippers and consignees, and subject them to excessive charges resulting from arbitrary weights, vastly increase the number of overcharge claims, and afford many opportunities for discriminations in rates between competing shippers. Grain should not, any more than grain products or other traffic, be subjected to a variable or

shifting rule of minimum carload weights. We hold upon all the facts and circumstances that defendant's different and varying minimum weights for grain in carloads, as stated in its circulars (leaving oats out of the question) and as prescribed in the present tariffs above mentioned, are unreasonable and unjust and operate to subject complainant and other shippers to unjust discrimination and undue and unreasonable prejudice and disadvantage.

This company should return to its former practice of enforcing a fixed and reasonable minimum carload weight for corn and other grain, irrespective of the capacity of cars furnished by it to shippers. We are not to be understood as holding that the company may not rightfully require shippers to designate about the capacity of car or cars desired for loading grain, or that agents of the company cannot properly exercise such supervision of the loading as will tend to prevent the same shipper from overloading a small car and loading a large car far below its capacity. It seems to us that the company may largely remedy underloading of cars with reference to their carrying capacity by proper instructions to agents to inform themselves, before ordering the car, of the quantity which will probably be loaded; to change cars about as between different shippers, when practicable, so that each car will receive the proper load from the company's standpoint; to require shippers loading more than one car to load the larger car first and as full as orders from consignees will permit; and to be generally vigilant on behalf of the company in respect of the shipment of carload quantities of grain.

Although defendant's maximum and minimum weight rules and its method of putting them in force have been separately considered herein, they are not unrelated. It is not clear that shippers, loading without scales, can invariably come within 4,000 pounds above the marked car capacity, when they must also load up to or near the marked capacity to avoid paying freight on more weight than is actually shipped. Under such uncertainty of general compliance with the maximum-weight rule, violation of which results in much higher charges, the duty of the carrier to fix a reasonably low minimum weight for cars becomes more imperative. While 4,000 pounds below the marked capacity, and not less than 28,000 pounds, may be a reasonable minimum

weight for cars having the least capacity, such a minimum weight for a car of 50,000 pounds' capacity, when the shipper finds that he is only able to load between 30,000 and 40,000 pounds, becomes onerous and oppressive. It comes to this, then, that a maximum-weight rule of 4,000 pounds above the marked capacity, with increase of rate for overloading, is a proper provision against danger to life and destruction of property, and works no serious hardship upon shippers, provided the minimum weight prescribed by the carrier is sufficiently below the marked capacity; that minimum carload weights which differ with the size of cars furnished by the carrier and whereby the minimum for one car may be 28,000 pounds, while the least load for another car may be considerably more, and even as high as 56,000 pounds, are unjust and burdensome upon shippers and the traffic in grain over defendant's road; and that schedules plainly showing, not only the rates, but any regulations of the carrier prescribing the maximum carload weight and a fixed and reasonable minimum weight for grain in carloads, must be published and kept open by the carrier at its several stations for convenient public inspection, so that patrons of the railway may determine for themselves, as the law leaves them to do, what transportation charges can lawfully be demanded of them for the carriage of their products.

Order will be entered directing the defendant, the Indiana, Decatur & Western Railway Company, to cease and desist from enforcing minimum weights on carload shipments of corn, or upon any other description of grain, which vary with the capacity of cars furnished by it to shippers, and to cease and desist from omitting to establish and enforce a fixed, reasonable and just minimum carload weight for corn, and for each other kind of grain; to cease and desist also from enforcing rules or regulations concerning the minimum or maximum carload weights of corn, or other grain, which are not stated upon its schedule of rates, fares, and charges, established and in effect for the transportation of corn, or other grain, in conformity with the requirements of section 6 of the Act to Regulate Commerce; and to pay to the complainant, Suffern, Hunt & Co., within twenty days after service of the order, as reparation for excessive and unlawful charges on the transportation of the three shipments of corn.

in carloads involved herein, the sum of \$10.55, excess charge on the shipment from Lintner to Cincinnati; the sum of \$4.11, excess charge on the shipment from Garretts to Indianapolis, and the sum of \$2.77, excess charge on the shipment from Camargo to Indianapolis.

J. W. CARY, R. M. THORNTON, S. A. BROWN & Co., R. L. SMITH, A. N. MATTHEWS, W. J. LLOYD, J. H. GADD, W. H. LINZY, T. E. CLARK, F. A. PICKARD, and W. S. WADSWORTH, Merchants and Dealers at Eureka Springs, Arkansas, *Complainants*,

v.

EUREKA SPRINGS RAILWAY COMPANY; ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY, and ALDACE F. WALKER and JOHN J. MCCOOK, Receivers Thereof; ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY, and ALDACE F. WALKER and JOHN J. MCCOOK, Receivers Thereof, *Defendants*.

(No. 433.)

Decided Aug. 21, 1897.

1. The defendant companies, by joint tariffs, established through lines from St. Louis and Springfield to Eureka Springs, and by an arrangement with the Harrison Transportation Company, attempted to extend by wagon carriage, such through lines to Harrison, Berryville, and many other points in Arkansas not reached by either or any line of railroad, charging much less to Eureka Springs on goods to be so forwarded, than on the same goods from same points of origin for Eureka Springs proper. *Held*, The provisions of the Act to Regulate Commerce do not apply to transportation by team or wagon, and neither the joint tariffs nor the arrangement of defendants with the Harrison Transportation Company constitute substantially dissimilar circumstances and conditions nor make them joint carriers with said Transportation Company, nor carriers at all beyond Eureka Springs, and such unequal charges to Eureka Springs constitute unjust discrimination, and subject complainants, their business and Eureka Springs, to unreasonable disadvantage and give undue preference to Harrison, and such other localities and shippers.
2. The rate on goods of the first class between St. Louis and Eureka Springs proper being \$1.25 per 100 lbs. and on the same goods from or to the Harrison district the charge for the same service being \$1.00 and on other classes in proportion; between Springfield and Eureka Springs the first class rate being 72 cents, and for or from the Harrison district 45 cents. *Held*, Such rates to and from Eureka Springs proper are unreasonable and unlawful.

3. The average annual earnings for a term of years would warrant a reduction of the Eureka Springs rates to the basis of rates conceded to the Harrison district, but the current annual earnings do not justify a reduction to the full extent of such discriminations and a moderate present reduction is recommended.
4. The charges of the Eureka Springs Railway Company between Seligman and Eureka Springs on first class goods to or from the Harrison district are 19 cents per 100 lbs., and on the business of Eureka Springs proper are 85 cents, with proportionate rates on all classes, which Eureka Springs rates are found to be unreasonable and unlawful.
5. Transportation charges should be liberal until the earnings are fully sufficient for a fair return on actual investment, but it does not follow that rates long maintained and grossly discriminative must be continuous or may be lawfully exacted year by year.
6. "Under the Interstate Commerce Act the Commission has no power to prescribe the tariff of rates which shall control in the future." *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. —

"The reasonableness of the rate in a given case depends on the facts, and the function of the Commission is to consider the facts and give them their proper weight." *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 40 L. ed. 985, 5 Inters. Com. Rep. 391.

Under the law as construed by the court the Commission has power to say what in respect to the past was reasonable and just, but as to rates complained of as unreasonable, unjust and unlawful, and so found to be by the Commission, it can make no provision or order for their reduction which the courts are required to enforce or the carriers obliged to obey.

When rates are found to be unreasonable, the Commission can declare them unlawful and recommend their reduction, and where, after investigation, rates of carriers complained of are found to have been in the past, and still to be, unjust, unreasonable and in violation of the statute, it is made the duty of the Commission, by section 15 of the Act to regulate commerce, to notify and require such carriers to cease and desist from such violations.

Charles D. James, for complainants.

W. H. H. Clayton and *O. W. Watkins*, for defendants.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner*:

The complainants state that they are merchants, dealers, and shippers in business at Eureka Springs, Arkansas, that the defendants are common carriers of passengers and property, wholly by railroad, between points in Arkansas, and points in Missouri, and other States, and state the rates charged by the defendants

for the transportation of various kinds and classes of freight or articles of merchandise to Eureka Springs, from St. Louis, Springfield and Seligman, Missouri, respectively, which rates and charges, the complainants allege to be unreasonable, unjust, and in violation of the Act to Regulate Commerce.

They further state, that the defendants unjustly discriminate against the complainants, and subject them, the business, trade and traffic in which they are severally engaged, and the city of Eureka Springs, to undue and unreasonable prejudice and disadvantage in this:—that the defendants charge and receive less for the transportation of goods from St. Louis, Springfield and other points to Eureka Springs, when such goods are consigned to Harrison, Arkansas, and other points in that State beyond Eureka Springs, the transportation from Eureka Springs to such points beyond being by wagon, than they, the defendants, charge and receive from complainants and others for doing for them a like and contemporaneous service in the transportation of the same kind of goods and classes of freight consigned to complainants or others at Eureka Springs.

That defendants carry merchandise from St. Louis, Springfield and other points in Missouri and other States to Harrison and other points in Arkansas by railroad to Eureka Springs, thence by farm wagons to Harrison and other Arkansas points, for which service through to Harrison and such other points defendants charge and receive less aggregate compensation than they demand and collect for carrying the same kinds and classes of freight, by rail, from St. Louis, Springfield and other points to Eureka Springs proper, thereby violating section 3 of the Act, and giving undue and unreasonable preference and advantage to merchants and dealers at Harrison and other points beyond Eureka Springs, the terminus in Arkansas of the route or line formed by the defendant companies; also thereby charging less in the aggregate for the longer than the shorter distance over the same line, in violation of the 4th section of the Act.

That the rates charged by defendants jointly for the transportation of passengers from St. Louis and from Springfield, and by the defendant, the Eureka Springs Railway Company, separately from Seligman to Eureka Springs, are unreasonable, unjust and unlawful.

That by reason of defendants' violations of law as above set forth, complainants have incurred loss and sustained damage by payments of transportation charges in excess of reasonable and just rates, which they, the complainants, offer to prove.

Wherefore they pray that the defendants be severally required to answer the statements herein made, and after due hearing and investigation, ordered to desist from said violations of the Act, and to make reparation to complainants for excessive charges, and further, to conform to such orders as the Commission may make in the premises.

The receivers of the Atchison, Topeka & Santa Fé Railroad Company, answering separately as receivers, state that they are not in any manner concerned in the matters complained of, and have not been guilty of the wrongs charged in the complaint; that as receivers they have been operating the Atchison, Topeka & Santa Fé Railroad under the orders of the United States Circuit Court, and do not operate or have any control over the road of the St. Louis & San Francisco Railway Company, and pray that the complaint be dismissed.

The Eureka Springs Railway Company for its separate answer admits that complainants are merchants, dealers and shippers engaged in business at Eureka Springs; admits that it is a common carrier of passengers and property in connection with the other defendants by continuous carriage or shipment between points in the State of Arkansas and points in the State of Missouri and other States; admits that the rates set out in the complaint are substantially correct; and denies that the rates charged to complainants and others by it, the said defendant, and its codefendants for the transportation of various kinds and classes of freight to Eureka Springs, Arkansas, from Seligman, Springfield and St. Louis, and other points on their roads, are excessive, unreasonable or unjust, or in violation of the Act to Regulate Commerce.

And, further answering, "the said defendant denies that it and its codefendants charge and receive less for the transportation of freight articles from St. Louis, Springfield and other points to Eureka Springs, when such articles are consigned to Harrison, or other points beyond Eureka Springs in the State of Arkansas, than they charge, collect and receive for rendering identically

the same service to complainants or others in the transportation of the same kind of freight, consigned from the same point or points of shipment to Eureka Springs, as alleged in the complaint, but the said defendant avers the fact to be, that Harrison is a town without railroad communication, located about fifty miles east of Eureka Springs, the terminus of the said defendant's line of railway. That the road leading from Eureka Springs to the said town of Harrison runs over and through a rough and mountainous country, rendering the transportation of freight difficult and expensive. That in the year 1888 there was organized at the said town of Harrison a transportation company, which has ever since been, and still is, in existence. That the said company is called the Harrison Transportation Company. That shortly after the organization of the said company, to wit, on the of , 1888, the defendant and its codefendant, the St. Louis & San Francisco Railway Company, jointly entered into a contract with the said transportation company, whereby it was agreed, that certain joint rates and divisions should be established between them as to all freight interchanged by them between the points of St. Louis and Springfield, in the State of Missouri, and Harrison and certain other points in the State of Arkansas, which said rates and divisions are fully set out in a statement hereto attached marked "Exhibit A," and are made a part of this answer. That the freight to any point beyond Eureka Springs is greater than the freight on the same kind of property to Eureka Springs. That the said agreement is still in existence and being complied with by all of the parties to the said contract.

"That the charges for freight between all other points than those above named are not affected by the said contract and are charged for at the same rates as all other freights coming or going to or from Eureka Springs. And except shipments so made by and through the Harrison Transportation Company, all freights consigned to Harrison or other points beyond Eureka Springs are charged for at the regular tariff rates from the point of shipment to Eureka Springs.

"By the aforesaid contract a through continuous line of transportation for freight was established between St. Louis and Springfield, in the State of Missouri, and Harrison and the other

aforesaid places in the State of Arkansas, extending from 14 to 100 miles beyond Eureka Springs. That as to all of said freight traffic the said Eureka Springs was and is not a point of final destination. Wherefore, the said defendant says that the conditions and circumstances existing as to all of such freight were different and dissimilar from all other freight shipped to Eureka Springs.

"The defendant further avers that by virtue of the said agreement the said defendant is enabled to compete with other and competing lines of railroad entering and passing through Springfield, Mo., to which said place, without the benefit of the arrangement, made under the said agreement, all of the freight now coming to Eureka Springs, consigned to Harrison and the other places aforesaid, and all of the freight coming from the said place to Eureka Springs for shipment, would be diverted, to the great damage of the said defendant, as well as to the damage of the plaintiffs and other citizens of Eureka Springs. Wherefore, the said defendant says that it has not and does not discriminate against the complainants."

Further answering, said defendant states that in all cases the freight charge on like commodities has been greater on that carried from St. Louis and Springfield to Harrison and the other aforesaid Arkansas points, and from the said Arkansas points to Springfield and St. Louis, than on that which is carried between St. Louis and Springfield, Missouri, and Eureka Springs proper; and said defendant denies that it and its codefendants undertake to carry articles of freight from St. Louis, Springfield and other points in Missouri, to Harrison and other points in Arkansas, by carrying such articles by railroad to Eureka Springs and forwarding same thence to Harrison by wagon, and charging a less aggregate compensation for the entire through transportation to Harrison and said other points than they charge and collect for carrying the same kind of freight by railroad to Eureka Springs from St. Louis, Springfield or other points.

Said defendant further states that complainants are retail dealers and merchants, and that the town of Berryville, Arkansas, the nearest competing point, is 14 miles from Eureka Springs, while the towns of Green Forest and Carrollton are 25 and 35 miles distant, and all other towns receiving freight by the arrangement with the Harrison Transportation Company are not in any

way competitors of complainants, and because the freight charged to said towns is greater by 25 to 30 cents per 100 lbs. on all first class freight, and on all through freight in proportion; and defendant denies that complainants have suffered any great loss or damage by reason of any violations of law or anything done by defendants.

Further answering, said defendant denies that the rates charged for the transportation of passengers by the defendants to Eureka Springs from St. Louis and Springfield, Mo., and by said defendant from Seligman to Eureka Springs, are unreasonable and unjust, and in violation of the Act to Regulate Commerce; and further says that the question of the reasonableness of its charges for the transportation of passengers is pending before the Commission in a case already heard, and the said defendant offers to conform to the decision of the Commission to be made in that case; and prays that this case may be dismissed.

The separate answer of the St. Louis & San Francisco Railway Company is substantially the same as that of its codefendant, the Eureka Springs Railway Company.

Testimony was taken by one of the Commissioners at Eureka Springs, Arkansas, where the parties were represented by counsel. After investigation and the consideration of the testimony and briefs filed on behalf of complainants and defendants, in addition to the matters set forth and admitted by the parties, the following facts are found:

1. The road of the Atchison, Topeka & Santa Fé Railway Company does not run to Eureka Springs, and neither the company nor the receivers thereof have any interest in, or control over, the matter in controversy in this proceeding.

(The word defendants, as hereinafter used, refers to, and includes only, the St. Louis & San Francisco Railway Company and Eureka Springs Railway Company.)

The defendants are carriers of persons and property between St. Louis and Springfield, Mo., and Eureka Springs, Ark., under joint tariffs; from St. Louis by way of Springfield, Monett, and Pierce City to Seligman, Mo., a distance of 313 miles, over the St. Louis & San Francisco road, thence 18½ miles over the Eureka Springs road; from Springfield, the route is by way of Monett and Pierce City to Seligman, 75 miles, over the St. Louis & San

<i>Flax, Hemp, Millet, Hungarian and Broom Corn Seed, Pop Corn and Castor Beans, C. L.</i>	27½
Hard Coal, C. L.	18
Hay, Baled, in box cars, O. R. F. min. wt. 20,000 lbs., C. L.	26
Hides, Green, C. L.	47
Hides, Green, L. C. L.	78
Hides, Dry, pressed in bales, any quantity.....	92
Lime, in Sacks, Bags or Bulk, C. L.	25
Lumber, all kinds, south-bound, C. L.	18
Lumber, Pine and Oak, min. wt. 24,000 lbs., north-bound, C. L.	17
Lumber, Walnut and Cherry, min. wt. 24,000 lbs., north-bound, C. L.	22
Mineral Water, in Wood, L. C. L.	60
Mineral Water, in Glass, packed, L. C. L.	70
Onyx, Rough, min. wt. 24,000 lbs., C. L.	20
Sash, Doors and Blinds, Common Pine or Cypress, L. C. L.	72
<i>Sheep Pelts, Dry, pressed in bales, any quantity</i>	92
Soft Coal, C. L.	20
<i>Rye, Oats, Barley, Corn Meal, Melons (north-bound) and Sorghum Seed, C. L.</i>	27
<i>Wheat, Flour, Oat Meal, Hominy, Grits, C. L.</i>	27½
Wool, in sacks, any quantity.....	87
<i>Wire, Wire Staples, Nails and Spikes (except when manufactured of Copper), straight or mixed, C. L.</i>	50
Stone, Rough or Sawed, C. L. (min. wt. 40,000 lbs.), from all points on the Eureka Springs Railway to St. Louis and Carondelet, Mo.	10
Horses and Mules, per standard car.....	\$66.00
Cattle, min. governed by size of car, per hundred pounds.....	25
Hogs, S. D., min. governed by size of car, per hundred pounds.....	81½
Sheep, min. governed by size of car, per hundred pounds.....	35
Live Poultry, C. L. (min. wt. 20,000 lbs.) from Eureka Springs.....	45
Live Poultry, L. C. L., from Eureka Springs.....	1 25
Walnut Logs, C. L. (min. 30,000 lbs.) per cwt.....	17½

Since the hearing, investigation and taking of testimony in this case, the defendants have filed tariffs showing a reduction of the fifth class rate and the commodity rate on "wire, wire staples, nails and spikes (except when manufactured of copper) straight or mixed C. L." from 50 cents to 47 cents, a reduction of the commodity rate on "cotton piece goods any quantity" from \$1.10 to 84 cents. Also slight modifications on stone and livestock rates.

In the summer of 1895 an effort was made to establish wagon or team transportation for freights between Eureka Springs and Seligman at the rate of 25 cents per hundred pounds without regard to classification and with delivery at the door or business place of shippers or receivers at Eureka Springs. Such delivery

from the railway depot costs 5 cents per 100 pounds. The charges on all the goods carried over this wagon route, in the first five months of the year 1896, would have been \$133.56 if carried over the railway.

The bulk or principal portion of the freight which is carried from Seligman to Eureka Springs does not originate at Seligman but is hauled there over the road of the St. Louis & San Francisco Railway Company, one of the defendants. They have the same station agent at Seligman who receives from and forwards goods over both roads.

A witness doing a hardware business at Eureka Springs testified respecting the local rate or rates between that place and Seligman:

"I shipped a carload of nails from Wheeling, West Va., to Seligman (over 900 miles). "The freight from Wheeling, West Va., was 40 cents a hundred pounds, and those people charged me 25 cents from Seligman here" (18½ miles), "and weighed in 1,200 pounds of kegs to boot. That I did not pay from Wheeling to Seligman. A keg of nails ordinarily is shipped at a hundred pounds and they do not include the keg as weight, but this road does. We pay for 108 pounds over this road for a keg of nails."

This witness testified further:

"I do not think it was reasonable in proportion to the distance from Wheeling, West Va., to Seligman, Mo."

And again, "The freight at present on carloads, for instance, taking nails and iron and wire, mixed carload, is 30 cents from St. Louis to Seligman (313 miles), and from St. Louis to this point 50 cents, and making 20 cents a carload from Seligman here; the other road gets 30 cents and this road 20."

3. These defendants make and publish rate sheets purporting to be joint tariffs between them and the "Harrison Transportation Company"—its concurrence does not appear on or from such rate sheets or joint tariffs. Under these joint tariffs or rate sheets defendants carry merchandise of various classes and descriptions from St. Louis and Springfield, Mo., consigned to the Harrison Transportation Company for Harrison, Berryville and points in Arkansas beyond Eureka Springs, and more distant from St. Louis and Springfield than Eureka Springs, from which the trans-

portation to such more distant points is by team, under the supervision or upon the order of said Harrison Transportation Company. The rates from St. Louis and from Springfield through Eureka Springs to Berryville and eleven other places having the same rate as Berryville, and to Harrison and sixty-eight other points taking the same rate as Harrison, and the rates from St. Louis and Springfield, Mo., to Eureka Springs, Ark., as well as the division or apportionment of such rates, are shown by the following table, the rates being the same, in both directions:

[illegible]

4. Soon after the Act to Regulate Commerce took effect four or five men, some or all of them merchants and traders at Harrison, Ark., named one of their number president, another treasurer, and another secretary, and designated themselves "The Harrison Transportation Company." Shortly thereafter the defendant railway companies made their said rate sheets or joint tariffs of rates, from St. Louis and Springfield to Berryville, Harrison, and other Arkansas points, and named the Harrison Transportation Company as a party to such rate sheets. Said tariffs or rate sheets constitute the transportation contract or arrangement between defendants and said transportation company, except that on the delivery of freight carried under these tariffs and consigned to the Harrison Transportation Company, the Eureka Springs Railway Company collects and pays back to said Transportation Company from 1 to 5 cents per 100 lbs., part of the transportation charge for the wagon haul beyond Eureka Springs.

Said Transportation Company has no articles of association or agreement or by-laws, has no capital or property, owns no teams or wagons, and has no transportation facilities. It, or some of its members, occasionally hire teams and haul goods to Harrison, belonging to persons located 10 or 15 miles farther east, who come to Harrison for their own goods. As a rule those who get the Berryville or Harrison rate do their own hauling from Eureka Springs, or hire teams to do it. The goods are delivered by the railway company on an order from the secretary, or some agent of the Transportation Company, who issues such orders, to all entitled to the Berryville or Harrison rate, under said joint tariff arrangement.

The Harrison Transportation Company was formed, that the defendant railroad companies might make the arrangement, rates and charges, provided in the joint tariffs or rate sheets under which the railway companies receive for carrying goods to Eureka Springs, when consigned to the Transportation Company, less than the railway rates and charges on similar goods consigned to, and received by, the complainants, or others at Eureka Springs, as appears by the above tables of divisions and apportionment of such rates.

The said Harrison Transportation Company retains as its own,

the 1, 2, 3, 4, or 5 cents per hundred pounds, part of the wagon haul portion of the rate on freight delivered to it, or on its order, by the Eureka Springs Railway Company, which amounts in the aggregate to \$50 or \$60 per month and out of which said Transportation Company pays its Secretary \$15 per month for his services in issuing freight orders, pays the amount of its expenses, chiefly the cost of printing such orders, and divides the balance among its members.

Berryville is about 14 miles from Eureka Springs and 75 from Springfield. Harrison is about 45 miles from Eureka Springs and 90 from Springfield. The points getting Berryville or Harrison rates are from 14 to 90 miles distant from Eureka Springs and from 75 to 130 from Springfield. The trip to Springfield and return by wagon from these points averages about six days. Teams haul some country produce to Springfield and bring return loads of goods. At the rate of compensation usually paid for hauling from Springfield, the transportation cost of goods of various classes and kinds hauled from Springfield to Harrison Transportation Company district points, is about the same by team overland from Springfield as by team and rail by way of Eureka Springs, when the wagon haul from Eureka Springs is done at the rate allowed in the tariffs to the Transportation Company. Previous to the building of the Eureka Springs Railway, Berryville, Harrison, and other places in that district obtained their goods and supplies from the city of Springfield, and still do to a limited extent, by direct wagon transportation. In this way some places get nearly half they use in weight.

Goods from St. Louis and dry goods from Springfield are in the main carried by rail to Eureka Springs for the Harrison and Berryville district. Considerable hardware from Springfield is hauled by teams. Some of the places named in said tariff sheet are villages or towns; others are crossroads, neighborhoods, settlements, or country places. Springfield is a city of about 22,000 inhabitants, and contains several wholesale establishments. The population of Eureka Springs is about 4,000. It has one, not very large, wholesale mercantile establishment. Between the merchants and country stores of some places in the Berryville and Harrison Transportation Company districts and those engaged in the same business at Eureka Springs there is competition.

Any considerable increase in the cost of the transportation of goods, by rail and wagon, from Springfield and St. Louis, by way of Eureka Springs, to said Transportation Company points, would to some extent, encourage and increase the business between such points and Springfield by wagon. An increase of 25 cents per hundred pounds in the average cost of transporting goods of the various classes would divert from the Eureka Springs route freights which now go by that route to and from the Berryville and Harrison district. The president of the Eureka Springs Railway Company caused a statement to be made of amount received by that company in what he designated "flush times" and thought it was about \$12,000 from Harrison Transportation district business.

5. At the time of the hearing the passenger rates, under joint tariff, over defendant's line between St. Louis and Eureka Springs were:

One way straight unlimited tickets,	-	-	-	-	\$11.10
Round trip (90 days' limit),	-	-	-	-	12.50

The division of this one way rate was to the St. Louis & San Francisco Railway Company (St. Louis to Seligman), \$9.35; and to the Eureka Springs Railway Company (Seligman to Eureka Springs), \$1.75.

The division of the round-trip rate for the St. Louis & San Francisco Railway (St. Louis to Seligman and return), \$10.53, and to the Eureka Springs Railway Company (Seligman to Eureka Springs and return), \$1.97.

On passengers between Paris, Texas and Eureka Springs, the Eureka Springs Railway Company received \$1.77 for the round trip between Seligman and Eureka Springs.

The defendants had established no round-trip rate and had published no joint tariff of passenger rates between Springfield and Eureka Springs. The St. Louis & San Francisco Railway Company received for its local between Springfield and Seligman \$2.25, the Eureka Springs Company accepted between Seligman and Eureka Springs \$1.75, making the rate from Springfield to Eureka Springs \$4.00.

The local rate between Seligman and Eureka Springs, when complaint was filed, was \$1.85, which had been reduced by that company to \$1.75.

A daily hack or stage carries passengers between Eureka Springs and Seligman at the rate of 75 cents. At times the travel by this route is considerable.

The rates and charges for the transportation of passengers and freights complained of have been substantially the same for many years, during which time the prices of commodities have materially decreased.

The statute of the State of Arkansas contains the following provision :

Sec. 1. "The maximum sum which any corporation, officer of court, trustee, person, or association of persons, operating a line of railroad in this State, shall be authorized to charge and collect for carrying each passenger over such line within this State, in the manner known as first class passage, is hereby fixed at the following named rates: On lines of railroad 15 miles or less in length, 8 cents per mile. On lines over 15 miles in length and less than 75 miles in length, 5 cents. On lines over 75 miles in length, 3 cents per mile."

The statute of the State of Missouri contains the following provisions :

"Sec. 831. Roads Classified.—All railroads in the State of Missouri are hereby divided into three classes, to be known as class A, class B, and class C. Class A shall include all through or trunk line railroads. Class B shall include all the branch roads owned, leased or occupied by such through or trunk line railroad companies or corporations. Class C shall include all other railroads or parts of railroad owned, leased or occupied, or which may hereafter be owned, leased or occupied in this State, either wholly or in part. (Laws 1875, p. 113, § 1.)

"Sec. 832. Passenger Charges Regulated.—Any individual company, or corporation owning, operating, managing or leasing any railroad or part of a railroad in this State, in the several classifications as herein prescribed, shall be limited to a compensation per mile for the transportation of any person with ordinary baggage, not exceeding one hundred pounds in weight, as follows: In class A not exceeding 3 cents per mile, and in classes B and C not exceeding 4 cents per mile; provided, that no such individual, company or corporation shall charge, demand or receive any greater compensation per mile for the transportation of chil-

dren of the age of twelve years or under, than one half of the rate above prescribed; and provided further, that the rates for transportation herein prescribed may be reduced, as hereinafter provided. (Laws 1875, p. 113, § 2.)"

Under these provisions of the Missouri statute the St. Louis & San Francisco Railroad Company has been placed in class A upon which class the compensation per mile for the transportation of passengers is limited to 3 cents.

When this proceeding was instituted November 21, 1895, there was pending before the Commission a complaint made February 19, 1895, by the Board of Railroad Commissioners of the State of Missouri against the passenger rates between Seligman and Eureka Springs over the Eureka Springs Railway. In that case since decided, the Commission found that a reduction of the rate from \$1.85 to \$1.20 should be made; and in accordance with this decision the Eureka Springs Railway Company on April 1, 1897, reduced its rate of charges for the transportation of passengers between Seligman and Eureka Springs to \$1.20.

On May 24, 1897, the defendants reduced their one-way rate for the transportation of passengers, between St. Louis and Eureka Springs, to \$10.55, the extent of the reduction already made in the rate between Seligman and Eureka Springs; and on June 10, 1897, the defendants made a reduction to the like extent, in their one-way passenger rate, between Springfield and Eureka Springs and established a rate of \$3.45, and also established a rate of \$6.45 for the round trip from Springfield to Eureka Springs and return.

7. In 1882 the defendants made an arrangement or agreement to induce the building of the Eureka Springs road and a further consideration, was the delivery to the St. Louis & San Francisco Railway Company of \$100,000, face value, of the capital stock and \$100,000, face value, of the second-mortgage income bonds, of the Eureka Springs Railway Company, for which, among other concessions and facilities afforded the Eureka Springs Railway Company, is the following contract as shown by the testimony:

"They" (The St. Louis & San Francisco R'y Co.) "pay us" (The Eureka Springs R'y Co.) "15% of their gross earnings derived from through and competing freight traffic interchanged each way at Seligman, Mo., and 10% of their gross earnings de-

rived from through and competing passenger traffic. Through traffic is such freight and passenger business as is interchanged at Seligman, Mo., originating beyond terminal stations or places upon the lines of the St. L. & S. F. Ry. Competing traffic is such business as originates at or beyond stations on St. L. & S. F. Ry. intersected or which may be intersected by railroad operated by other companies. St. L. & S. F. Ry. agreed to furnish cars to E. S. Ry. Co. for business interchanged when requested to do so at rates usual for such services. St. L. & S. F. Ry. is to pay to E. S. Ry. Co. in any one year only so much of such rebate or percentages mentioned as will, together with the net earnings of E. S. Ry., make up or help to make up the sum of \$90,000, which sum is required to pay interest on its \$500,000 first-mortgage bonds (6%) and interest at 6% on \$500,000 second-mortgage bonds (incomes) and semiannual dividend at 6% per annum on its \$500,000 capital stock. Rebate or percentages to be rendered or settled semiannually."

In its several annual reports to the Commission, from 1888 to 1895 inclusive, this company states that its road was built and equipped by the contractor, for which he received all of the \$500,000 first-mortgage bonds and the \$500,000 income bonds and the \$500,000 capital stock. In some of these reports the capital stock is stated to be \$499,600.

Under this agreement between the defendants, which runs for the period of 50 years, the Eureka Springs Railway Company has received from the St. Louis & San Francisco Railway Company annually, since the construction of the Eureka Springs road, sums as follows:

Years.	Amount rebate.
1884	\$13,666 71
1885	11,739 89
1886	13,844 62
1887	18,519 20
1888	15,878 49
1889	12,594 32
1890	12,129 61
1891	11,975 89
1892	13,896 17
1893	13,998 89
1894	12,828 09
1895	9,836 58

8. The following is a statement of actual earnings and expenses

of Eureka Springs Railway Company, for years from 1883 to 1895 inclusive:

Calendar Years.	Total Gross Earnings.	Total Expenses.	Net Earnings.	Expenses % Gross Earnings.
1883.....	\$88,246 97	\$22,283 90	\$65,963 07	25.25
1884.....	80,869 10	42,894 61	37,974 49	53.04
1885.....	75,719 56	29,755 69	45,963 87	39.29
1886.....	76,546 06	26,376 72	50,169 34	34.45
1887.....	96,278 32	31,320 12	64,958 20	32.53
1888.....	87,721 96	35,528 78	52,193 18	40.50
1889.....	78,471 67	34,877 18	43,594 49	44.45
1890.....	75,098 42	35,017 59	40,080 83	46.63
1891.....	74,678 22	33,987 60	40,690 62	45.51
1892.....	81,087 15	39,874 52	41,212 63	49.17
1893.....	78,405 03	38,385 48	40,019 55	48.96
1894.....	73,013 85	32,440 05	40,573 80	44.43
1895.....	62,887 29	32,385 50	30,501 79	51.50
Annual average....	\$79,155 66	\$33,471 36	\$45,684 29	42.28

The earnings of this company for the first four months of the calendar year 1896, show a slight increase over the corresponding months of 1895, but for the fiscal year ending June 30th, 1896, after the hearing and taking of testimony, this company reported gross earnings from operation \$62,743.32, and income from operation \$34,089.60.

This company reports that its earnings for the years 1888 to 1896 inclusive were derived:

Years.	Passengers.	Freight.
1888	\$38,966.41	\$34,457.51
1889	36,539.80	31,084.38
1890	38,651.33	35,023.01
1891	40,326.58	37,127.73
1892	38,098.87	38,013.24
1893	41,103.00	47,143.65
1894	31,843.61	38,305.36
1895	33,746.95	35,772.58
1896	28,979.85	33,763.47

**TONNAGE AND RATE PER TON PER MILE OF FREIGHT TRAFFIC
OF THE EUREKA SPRINGS RY. CO.**

Year.	Live Stock. Tons.	Lum- ber. Tons.	Mer- chan- dise. Tons.	Cot- ton. Tons.	Hay. Tons.	Coal. Tons.	Stone, Sand, etc. Tons.	Miscel- lane- ous. Tons.	Total Freight. Tonnage.	Rate per ton per mile, in cents.
1888.	1360	7000	5405	1429	770	510	600	2486	19560	9.250
1889.	151	2162	4159	1379	1073	895	155	3638	18112	12.814
1890.	943	3633	3601	910	652	1727	611	2846	14923	10.107
1891.	1563	3205	2864	1100	634	1949	2012	2680	16607	9.458
1892.	1848	2187	3139	1056	657	2259	3819	2783	17693	9.055
1893.	3559	1611	3416	327	843	2651	9028	2688	24198	8.283
1894.	3423	4331	2937	518	742	1878	2578	2139	18541	8.642
1895.	3208	1210	2744	229	835	1546	2104	3165	15041	10.184
1896.	2603	3196	2459	94	817	1630	911	2426	19136	7.735

The average rate per ton per mile received by all the roads of the United States was in 1895 eight hundred and thirty-nine thousandths cents. The average rate received by all the roads in group VIII. composed of the States of Arkansas, Missouri, Kansas, parts of the States of Colorado and Texas, the Indian and Oklahoma Territories and part of New Mexico, was one and one hundred and sixty-one thousandths cents.

9. The following is a statement of the income account and financial exhibit of the Eureka Springs Railway Company for the calendar year 1895, offered in testimony.

Conducting Transportation.....	\$13,880.46
Maintenance of Way.....	7,237.60
Maintenance of Equipment	3,476.39
General Expenses	6,186.34
Taxes	2,164.71
	<hr/>
Net Earnings	\$32,885.50
	<hr/>
	\$62,887.29
	<hr/>
Interest on 1st Mortgage Bonds.....	\$30,090.00
Debit Entry in Profit and Loss Account.....	250.00
Balance—Profit and Loss	81,245.50
	<hr/>
	\$61,495.50

Freight Earnings.....	\$26,533.23
Passenger ".....	22,699.15
Rebate ".....	9,336.58
Express ".....	1,560.00
Mail ".....	1,517.36
Miscellaneous Earnings.....	1,240.98
	<hr/>
	\$62,887.29
Profit and Loss—Bal. from last year.....	\$30,993.71
Net Earnings	30,501.79
	<hr/>
	\$61,495.50

FINANCIAL EXHIBIT.

Franchises and Property.....	\$1,500,468.73
Cash	2,787.91
P. K. Roots, Treas.	8,112.38
Supplies	4,569.96
Fuel.....	816.91
Road Master's Supplies	2,896.00
St. L. & S. F. Ry. Co. (Rebate Account).....	5,324.38
Crescent Hotel	27.75
Harrison Extension.....	768.60
Bills Receivable.....	5,000.00
Due from Agents and others	118.99
	<hr/>
	\$1,530,891.60
Capital Stock	\$499,600.00
First Mortgage Bonds	500,000.00
Income Bonds (2d Mortgage).....	500,000.00
Accounts Payable	46.10
Profit and Loss.....	81,245.50
	<hr/>
	\$1,530,891.60

The interest, \$30,000, has been annually paid on the first-mortgage bonds. Since the year 1892, no interest has been paid on the second-mortgage income bonds. Interest on these income bonds amounting in the aggregate to \$172,000 was paid in that and previous years.

10. The roadway or track of the Eureka Springs Railway Company from Seligman is down a creek or small stream to White River and from thence up another such creek or stream to Eureka Springs, near Seligman, there is one heavy grade a mile long. With this exception, the fall or descent from either terminus of the road to White River is light and gradual. The

cuts are comparatively light side hill cuts, except through one ledge of rocks where some blasting was required. Besides one substantial iron bridge over White River, there are on the road forty-nine wooden trestles, most of them short, slight, low structures. There is nothing in the character of the road or the country through which it is built, to make its construction or maintenance exceptionally expensive.

11. Preparatory to building the road, the company issued \$500,000 6 per cent first-mortgage bonds and \$500,000 6 per cent second-mortgage income bonds, the interest payable if earned, not cumulative if not earned; also \$500,000 of stock.

The railroad company organized a construction company. In effect, practically and substantially, the railway company and the construction company were the same. The construction company took the \$500,000 first-mortgage bonds which were sold at about ninety cents to the dollar and with the proceeds built and equipped the road at a cost of from twenty-three to twenty-five thousand dollars per mile. The second-mortgage income bonds and the stock "were given" or "went with the others" to the construction company.

12. The St. Louis & San Francisco Railway Company operates a line from St. Louis by way of Springfield, Monett and Seligman, Mo. to Paris, Tex.; a line from Monett through Pierce City, Mo., and Wichita, Kan., to Ellsworth, Kan.; a line from Pierce City, Mo., to Sapulpa, Ind. Terr., and various branch lines in the States of Missouri, Kansas and Arkansas, aggregating a mileage of 1,328.17. 282.32 miles are leased lines, the rental of which is \$223,725, the amount of interest on bonds guaranteed.

This company offered no testimony as to its financial condition or the amount of actual investment, the cost of construction or equipment, the earnings or cost of operation of its road.

Its income account, filed with the Commission for the fiscal year ending June 30, 1896, reports:

Gross Earnings from operation.....	\$6,056,011.75	
Less operating expenses.....	8,721,652.16	
Income from operation.....		\$2,334,359.59
Dividends on Stocks owned	193.10	
Interest on Bonds owned.....	144.00	
Miscellaneous income less Expenses	41,428.37	
Income from other sources.....		41,765.47
Total income		2,376,125.06
Interest on Funded Debt, Accrued	2,179,897.00	
Rents paid for lease of road.....	223,725.00	
Taxes	230,040.81	
Other deductions	150,914.10	
Total deductions from income		2,784,576.91
Deficit		408,451.85

(This company also reports a deficit for the years 1894 and 1895.)

The comparative general balance sheet of the company as reported to the Commission for the same fiscal year states:

Cost of Road	\$62,542,635.43
Cost of Equipment.....	4,757,157.63
Stocks owned (other companies).....	229,824.12
Bonds owned (other companies).....	4,185,804.10
Other permanent investments	80,600.00
Equipment Leases	47,201.00
Equipment A. T. & S. F. R. R. Co., Trust A	793,087.01
Cash and Current Assets.....	511,283.88
Sundries.....	6,288,769.42
Grand total assets	79,835,312.09
Capital stock	26,359,300.00
Funded debt.....	42,887,426.20
Current Liabilities.....	5,404,811.81
Accrued Interest, not payable.....	320,610.50
Taxes accrued, not due	78,557.81
Canceled bonds	1,835,000.00
Called bonds.....	8,000.00
Deferred income account, bonds owned.....	275,640.00
Due A. T. & S. F. R. R. on rolling stock	487,511.10
Profit and Loss.....	2,153,954.67
Grand total.....	\$79,835,312.09

The capitalization or bonds and stocks issued on the 1,045 miles of road owned, as reported to the Commission, amounts in the aggregate to \$68,746,726, or \$65,732 per mile, and the capitalization or bonds and stocks on the 282 miles, operated but not owned, so reported, amounts to \$11,410,000, or \$40,151 per mile.

The report of this company for the year named further states, that it owns stocks of various railroad and other companies of the

face value of \$43,324,137, which it values at \$229,824 and from which it receives \$193.10 dividends, and that it owns bonds of other companies face value \$8,757,664, reported value \$4,135,804, and on which it receives \$144 interest. Of these stocks and bonds \$20,525,650 face value are reported by the company as deposited with the Mercantile Trust Company under consolidated mortgage.

13. In the matter of the transportation of property between St. Louis and Eureka Springs and between Springfield and Eureka Springs, the defendants by charging less when such property is destined to or shipped from points in the Harrison Berryville districts, beyond Eureka Springs, than they charge for the transportation of like property from and to the same places when not so destined to or shipped from points in said districts, they, the defendants, are guilty of unjust discrimination; and, further, the defendants by and through these discriminations subject the complainants, the traffic and business in which they are respectively engaged, and the city of Eureka Springs, to undue and unreasonable prejudice and disadvantage.

14. The charges of the defendants jointly for the transportation of freights between St. Louis and Eureka Springs, and between Springfield and Eureka Springs, and the separate charges of the Eureka Springs Railway Company for the transportation of freights between Seligman and Eureka Springs, heretofore and now made and specified in the numbered and lettered classes set forth in paragraph 2 of facts found, are unreasonable, unjust and unlawful.

15. We further find that the reasonable rates of charges on said numbered and lettered classes, from class 1 to class E inclusive, are shown in the following table and that any charges in excess of these rates are, and would be, unreasonable and unjust:

RATES IN CENTS PER 100 LBS.										
		Classes under Western Classification.								
BETWEEN		1	2	3	4	5	A	B	C	D E
St. Louis and Eureka Springs..	110	100	75	62	47	47	38	27	27	23
Springfield and Eureka Springs	62	53	46	44	36	32	24	19	17	15
Seligman and Eureka Springs..	30	28	27	25	16	14	12	9	8	7½

And we further find that any rate in excess of the commodity rates, including those established since the hearing and taking of testimony in this case, in force between St. Louis and Eureka Springs, as set forth in said paragraph 2 of facts found, would be unreasonable and unjust.

No evidence was given in support of reparation, nor was it claimed at the hearing or in argument.

CONCLUSIONS.

From the facts as above ascertained, it appears that the Atchison, Topeka & Santa Fé Railroad Company has no control over or interest in the rates, charges and practices involved in this proceeding and the complaint is dismissed as to that company and receivers.

The defendant railway companies, by joint tariffs, had formed a line of transportation and established rates and charges over it between St. Louis, Springfield and Eureka Springs, the southern terminus of such line and the end of the track or road of the Eureka Springs Railway Company. The arrangement between them and the Harrison Transportation Company was an attempt to extend their line beyond Eureka Springs, or in connection with the Harrison Transportation Company, to form an extended line from St. Louis and Springfield to Berryville, Harrison and other points in Arkansas not reached by the line or road of the defendants or either of them.

Under this arrangement and as a part of it, the transportation between Eureka Springs and Berryville, Harrison and said other points was to be and is conducted or effected by teams nominally under the supervision of said transportation company. For the rail transportation over their lines, the defendants charge and receive as much as 25 per cent more on some of the higher and something more on all the lower rated classes of freight shipped from St. Louis, and about 60 per cent more on the higher and considerably more on the lower rated classes of freights shipped from Springfield to Eureka Springs, not to be forwarded to Harrison and other points, than they, the defendants, demand and receive on like goods and freights carried between the same places to be forwarded. These unequal transportation charges to Eureka Springs are for equal distances, over the same line, and while in violation of other provisions of the Act to Regulate Commerce, they are not in conflict with the 4th section, which forbids greater compensation for shorter distances.

The provisions of said Act do not apply to transportation by team or wagon and neither the joint tariffs, nor the arrangement of defendants with the Harrison Transportation Company, made

them joint carriers with said Transportation Company, nor carriers at all beyond Eureka Springs. Neither does the fact that traffic is hauled beyond Eureka Springs by wagon constitute substantially dissimilar circumstances and conditions in the transportation of such traffic to that point by the defendants within the meaning of section two of the Act to Regulate Commerce. In collecting more from complainants and others for carrying goods to Eureka Springs, not to be forwarded, than they accept for carrying goods of the same classes from the same places to Eureka Springs to be forwarded to points in said Harrison transportation district, the defendants receive greater compensation from complainants than from other persons for "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions," and are guilty of unjust discrimination; and in thus denying to complainants and other shippers of articles to Eureka Springs, for use there or for distribution from that place, the same transportation charges which they accord to shippers and receivers of like articles there to be forwarded to Harrison and other places for distribution, the defendants subject the complainants, the business in which they are engaged, and the city of Eureka Springs to unreasonable disadvantage and give to Harrison and such other places, and to shippers and receivers of articles of freight at such other localities, undue preference. The defendant railway companies will be required to discontinue the illegal practice of exacting from complainants and other shippers to Eureka Springs proper, any greater charges than are at the same time demanded and received from other persons for the transportation of freights to Eureka Springs to be forwarded to more favored localities.

Should the defendants meet this requirement and equalize their charges, by so reducing the rates to their Eureka Springs customers as to give them the same scale of charges conceded to and enjoyed by the favored customers of the Harrison district during the last several years, such reduction would fully satisfy the complaint as to discriminations and preferences, as well as to alleged unreasonable freight rates between St. Louis and Eureka Springs and Springfield and Eureka Springs.

The rates exacted of complainants and other Eureka Springs shippers are:

RATES IN CENTS PER 100 LBS.

	Classes under Western Classification.									
	1	2	3	4	5	A	B	C	D	E
From and to St. Louis.....	1.25	1.11	84	70	50	48	35	28	28	24
From and to Springfield.....	72	62	53	49	40	35	26	21	19	16½

The rates conceded to Harrison district shippers on goods shipped to or from Eureka Springs, when forwarded from or to be forwarded to said district are:

RATES IN CENTS PER 100 LBS.

	Classes under Western Classification.									
	1	2	3	4	5	A	B	C	D	E
From and to St. Louis.....	100	87	76	58	45½	46	33½	27	27	22
From and to Springfield.....	45	38	31	29	24	21	17	13	13	13

A comparison of the above rates shows the discrimination practiced against Eureka Springs in the adjustment of rates between that place and St. Louis and Springfield; and the rates, so adjusted and in force, to and from Eureka Springs proper, are found and declared to be unreasonable and unlawful, and the defendants will be required to desist from the further exaction of these rates.

Were the current annual earnings of the defendants equal to the average of the past several years, we would not hesitate to declare any rate between Eureka Springs and St. Louis and Springfield, in excess of the rates so long, and still, conceded to shippers to or from the Harrison district, unreasonable and unlawful. The annual earnings of the Eureka Springs Railway Company, from the time of the construction of its road up to the time the case of the Missouri State Board, elsewhere in this opinion referred to, was instituted against this company in 1895, would warrant a reduction of the Eureka Springs rates to the basis of rates conceded to the Harrison district.

In view of the temporary insufficient earnings, we do not feel justified in declaring the Eureka Springs rates excessive to the full extent of the discriminations so long made by the defendants against the complainants and other shippers and receivers of goods at that place.

Under the circumstances we believe only a moderate present reduction should be made, and recommend that the defendant limit the aggregate rates and charges between St. Louis and

Eureka Springs, and Springfield and Eureka Springs as follows on the respective classes:

RATES IN CENTS PER 100 LBS.

	Classes under Western Classification.									
	1	2	3	4	5	A	B	C	D	E
Between St. Louis and Eureka Springs,	\$1.10	\$1.00	.75	.62	.47	.47	.38	.27	.27	.23
Between Springfield & Eureka Springs,	.62	.53	.46	.44	.36	.32	.24	.19	.17	.15

As above shown, rates much lower than we here prescribe for transportation service between St. Louis and Eureka Springs have been long in force and were fixed by the defendants as the measure of charges for like service between St. Louis and Eureka Springs for favored shippers and localities. For the distance, 331 miles, these rates are liberal, if not still excessive, and we have fixed upon these as the limit of the charges which we believe the defendants may lawfully make.

While the above scale of freight rates between St. Louis and Eureka Springs, ranging from \$1.00 on first class to 22 cents on class E, was and is being conceded by defendants to the favored localities, yet greater preference and favoritism was and is being shown to the same favored shippers and localities under the same circumstances and during the same time, on freights carried between Springfield and Eureka Springs, upon which defendants maintain a scale of aggregate charges of 45 cents on goods of the first class, and in ratable proportions on the lower grades.

In maintaining these, as we believe, hardly sufficiently remunerative charges under present conditions, so many years on freights carried by defendants between Springfield and Eureka Springs, forwarded by the Harrison Transportation Company, the defendants claim to have been influenced to some extent by the competition of overland carriage to Springfield; rates somewhat higher than those maintained under these circumstances, and in consideration of decreased earnings, are therefore considered justifiable; and we have determined that a rate of charges between Springfield and Eureka Springs, beginning with 62 cents per hundred pounds on freights of the first class, and on other classes proportionally less as stated above, may be lawfully made and may be maintained without diverting transportation to Springfield by the overland or wagon route.

These Eureka Springs-Springfield rates are much more than one half the rates we have above recommended for transportation between Eureka Springs and St. Louis, a distance three and one half times greater than the distance between Eureka Springs and Springfield.

The Eureka Springs Railway Company is a local separate carrier between Seligman and Eureka Springs. It appears from the testimony that freight carried to Eureka Springs is in the main through freight received at Seligman by the Eureka Springs Railway Company from the St. Louis & San Francisco road and that the freight for Eureka Springs, which originates at Seligman, is not very considerable. On through freight carried to Seligman by the St. Louis & San Francisco Railway Company and thence to Eureka Springs by the Eureka Springs Railway Company, the charges of the company last named, and the part of the through charges received for its haul between Seligman and Eureka Springs vary from 19 to 30 cents on first class freight with corresponding rates on other classes, while its local charges between these places are 35 cents per hundred pounds on first class freight with ratably lower charges on the lower classes. The charges of this company over its line on local business, and its part or division of the through charges are as follows:

RATES IN CENTS PER 100 LBS.

	Classes.									
	1	2	3	4	5	A	B	C	D	E
Eureka Springs R. R. receives on local business,	35	32	30	26	24	16	12	9	9	9
On St. Louis and Eureka Springs business,	30	28	27	25	20	12	10	8	8	8
On Springfield and Eureka Springs business,	30	28	27	25	16	14	12	10	8	7½
On St. Louis and Berryville business,	26½	24½	24	23½	18	12	9	7	7	6
On St. Louis and Harrison business,	23	22	21	18	15½	11½	8	7	7	6
On Springfield and Berryville business,	24	22	21	19	10	8½	7	5½	5½	5½
On Springfield and Harrison business,	19	16	13	12	10	8	7	5	5	5

And the scale of charges of the defendant, the Eureka Springs Railway Company, on local business or freights carried between Seligman and Eureka Springs is found and decided to be unreasonable and unlawful, and the discontinuance of this scale of charges will be required.

As already stated, very little freight originates at Seligman. Freight from other points is most economically shipped on through rates. The purely local business between Seligman and Eureka Springs is necessarily light, and relatively more expensive, especially in less than carloads, requiring transfer from car to car. For these and other considerations, chiefly light and insufficient present earnings, resulting mainly from depressed and disarranged business conditions, the rates in the following table are deemed now permissible and reasonable for the transportation of freights between Seligman and Eureka Springs:

Classes	1	2	3	4	5	A	B	C	D	E
Rates in cents per 100 pounds.....	30	28	27	25	16	14	12	9	8	7½

The establishment of these rates is recommended. They exceed by one half the compensation charged and received by this defendant for the same transportation service in respect to freights destined to or received from the favored localities of the Harrison district. To demand or exact any greater rates than are here recommended is believed to be unjust and unlawful.

The rates on passengers, one way, established by the defendants, and now in force, are:

Between St. Louis and Eureka Springs.....	\$10.55
" Springfield and Eureka Springs.....	8.45
" Seligman and Eureka Springs.....	1.20

In addition to these one-way fares and charges, the defendants maintain a round-trip rate of \$12.50 between St. Louis and Eureka Springs, continually available to the public, with the privilege of 90 days for the round trip. They also maintain a round-trip passenger rate of \$6.45 from Springfield to Eureka Springs and return. With the facilities thus afforded for round-trip travel, and in view of diminished earnings and the reductions made, as the result of the findings of the Commission, in the matter of the complaint of the Board of Railroad and Warehouse Commissioners of the State of Missouri, further reductions in the passenger rates complained of are not now deemed advisable.

In the fiscal year which had just closed when this proceeding was commenced, the average rate received by the railway companies of the United States for hauling 1 ton of freight 1 mile, was less than 1 cent. The average received by the railway companies, including the defendants, operating in the territorial

group composed of the States of Arkansas, Missouri, Kansas, parts of the States of Colorado and Texas, the Indian and Oklahoma Territories, and part of the Territory of New Mexico, was less than 1.2 cents. The Eureka Springs Railway Company received more than 10 cents per ton per mile, which is about nine times the average amount received by the railway companies operating lines in said States and Territories so grouped, because of similarity of, or in respect to, density of population, topography and nature of the country, character of industries served by railways, and other characteristics affecting the question of the cost and reasonable compensation for railway service. The average compensation thus received by the Eureka Springs Railway Company is reduced by the discriminations in favor of the Harrison district shippers, and to the extent of this reduction the compensation charged to and received from shippers to and from Eureka Springs proper, exceeds the average receipts per ton per mile of the Eureka Springs Railway Company, as above stated.

The reason urged on behalf of the Eureka Springs Railway Company in justification of the rates to and from Eureka Springs is the current diminished earnings and alleged insufficient revenue. That these charges are high is unquestioned, but it is claimed for this defendant that to modify or reduce them will require the operation of its road at a loss and result in financial embarrassment, and therefore that the rates and charges complained of are neither unlawful nor unreasonable.

This claim is based upon and finds support, in the lower or comparatively small earnings of this company for the years 1895 and 1896. The brief of counsel for this company says:

"The charges are not unreasonable, because the proof in this case shows that the railway company has not been able to more than pay running expenses and 6 per cent interest upon the money actually used in the building and construction of the road."

That transportation charges should be liberal, until the earnings are fully sufficient for a fair return on actual investment will hardly be questioned, but it does not follow that rates long maintained and grossly discriminative must be continuous and may be lawfully exacted year by year, though it be assumed that railroad investment or property is so much more inviolable than other property, that its owners must bear none of the losses or disad-

vantages incident to industrial and financial disarrangement, and that transportation charges are never excessive when the annual net earnings are less than the amount necessary to the reasonable annual income on such property and investment.

The road of this company was constructed and equipped, with the proceeds of \$500,000 6 per cent mortgage bonds, sold for less than face value. For the thirteen years ending with 1895, after the commencement of this proceeding, the average annual net earnings of this company were \$45,684.29, which is and was very much more than the amount necessary to "pay running expenses and 6 per cent upon the money actually expended in the . . . construction of the road." Not only has the interest, amounting in the aggregate to \$120,000 on the bonds sold to build the road, been regularly earned and paid, but this company has as a reserve fund, or has appropriated for the payment of interest on its second-mortgage bonds, or otherwise appropriated, more than \$200,000 additional net earnings. Though derived largely from charges discriminating against complainants and other shippers to and from Eureka Springs, these additional earnings are amply sufficient for temporary financial contingencies arising from exceptional causes.

The lumber tonnage, a principal source of revenue to the road, was larger in 1896 than in any previous year, and except 1893, the total tonnage of the last year was the largest in any year since 1888. A decrease in the earnings of this company for the last two or three years was largely in the passenger traffic, and can only be deemed casual and temporary. More moderate rates will hardly fail to induce travel and increase the volume of freight as well as passenger business.

The other defendant, the St. Louis & San Francisco Railway Company, in its answer sets up the arrangement with the Harrison Transportation Company and denies that any unjust discrimination or undue preference results therefrom, or that the rates charged to complainants by the defendants are unreasonable or unjust, and makes no other or further defense either in the testimony or argument.

The annual report of this company for 1896, not made in connection with this proceeding, shows gross earnings exceeding \$6,000,000 from the operation of its road and states a deficit for

the year. From this report we ascertain the capitalization of the company, or aggregate amount of stocks and bonds issued, exceeds \$65,000 per mile of road owned; that the company has invested in and owns stocks and bonds of other companies and enterprises exceeding \$52,000,000 face value, from which only a nominal or insignificant return is derived. This capitalization and other reported facts afford no convincing evidence, that the earnings and income of this company are unequal to a fair return on its actual investment, on the cost of building and equipping its road, or on its present value or the cost of replacing it. Of this we have an instance in the annual report and financial exhibit of the other defendant, the Eureka Springs Railway Company, formally offered and given in evidence in this case. This report and exhibit show capitalization (stocks and bonds issued) amounting to \$1,499,600, which exceeds \$81,000 per mile of road owned, while it was proved at the hearing that the road of that company cost about \$450,000, or less than \$25,000 per mile. The net earnings of the St. Louis & San Francisco Railway Company reported are more than sufficient for a fair return on a mileage investment greater than that of the Eureka Springs road, and there is nothing in the character of the St. Louis & San Francisco road, the industries served, or the nature or topography of the country traversed by it, to warrant the belief that its construction was, or that its maintenance is, per mile more expensive than the Eureka Springs Railway. Nor is there anything in the facts ascertained, to justify the belief that under ordinary industrial conditions, the net earnings of this company are not, and with the moderate reduction proposed will not, be sufficiently and amply remunerative.

Complaint having been made to the Commission by Cincinnati and Chicago Freight Bureaus against a number of railway companies, that their charges on several classes of freight for transportation from said cities respectively to the city of Atlanta and other places south of the Ohio River were unreasonably high and unjustly discriminating against complainants, the matter was inquired into and investigated. After trial, in which all the par-

ties interested were duly heard, the Commission decided that the rates and charges complained of were "unreasonable and unjust and in violation of the provisions of the Act to Regulate Commerce," and thereupon ordered the carriers to cease and desist from charging more than the rates prescribed and named by the Commission, which were something less than the rates the carriers had established and against which the complaint was made. Having made a report of its investigation, including the findings of fact on which its conclusions were based, and the carriers having refused to obey said order to reduce their rates, the Commission petitioned the United States Circuit Court of the Southern District of Ohio to enforce obedience. The case was by the Circuit Court of Appeals of the Sixth District certified to the United States Supreme Court that it might "determine what powers Congress has given this Commission in respect to the matter of rates." A similar, if not the identical, question had been before the Supreme Court (*Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391), in which it had rendered an opinion that the members of the Court of Appeals did not understand alike, that was variously understood among the most learned of the legal profession, and that was misunderstood and, as now appears, was misapplied by this Commission.

In the case so certified by the Court of Appeals the Supreme Court on May 24, 1897, rendered its opinion "that under the Interstate Commerce Act the Commission has no power to prescribe the tariff of rates which shall control in the future," and "that Congress has not conferred upon the Commission the legislative power of prescribing rates either maximum or minimum or absolute." *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. —

While thus deciding that under the Interstate Commerce Act, power to prescribe rates which shall control in the future has in no case been given to the Commission, it is conceded that the Act has given the Commission power "to determine what in reference to the past, was reasonable and just, whether as maximum or minimum or absolute" rates. How this power to say what was reasonable and just in the past will benefit the public, correct any abuse, be of any advantage or afford any relief to shippers

who are made to pay whatever unreasonable rates and charges the carriers may in the future establish or continue to exact, is a matter about which the court gives no information. In the case first above cited (162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391), the court said: "The reasonableness of the rate in a given case depends on the facts, and the function of the Commission is to consider the facts and give them their proper weight." What is their proper weight which can be given them as to the past? For what purpose is the Commission to consider them? How can the fact that the rates were unreasonable and unjust in the past be given or have any weight while like unreasonable and unjust rates are, and may continue to be, exacted in the future? In this case (162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391), the court adopted the view of the late Justice Jackson that "subject to the two leading prohibitions that their charges shall not be unjust or unreasonable, and that they shall not unjustly discriminate so as to give undue preference or advantage or subject to undue prejudice or disadvantage persons or traffic similarly circumstanced, the Act to Regulate Commerce leaves common carriers as they were at common law."

We are here advised that the Act to Regulate Commerce subjected common carriers to two leading prohibitions to which they were not subject at common law, one of which is that their charges shall not be unjust or unreasonable. Until the court decided to the contrary in the *Freight Bureau Cases* it was believed that this prohibition meant that the charges of common carriers shall not be unreasonable and unjust in the future or after the time the Act was passed. In these later cases the court says: "The fact that the carrier is given the power to establish in the first instance, and the right to change, and the conditions of such change specified, is irresistible evidence that this action on the part of the carrier is not subordinate to and dependent upon the judgment of the Commission." But it is nowhere decided or claimed that under the interstate commerce or other act the right of the carrier to establish and to change its rates is subordinate to or dependent upon the judgment or action of any other tribunal; and freed from the judgment and made independent of the Commission, interstate carriers are not subject to any provision of law requiring their rates and charges to be just or reasonable.

The 1st section of the Act to Regulate Commerce provides that all charges made for any transportation service "shall be reasonable and just; and every unjust and unreasonable charge for such service is prohibited and declared to be unlawful." Under the decision of the Supreme Court no charge for such service is prohibited. Reasonable and just rates are contemplated, not required.

Under the law so construed, the Commission has power to say what in respect to the past was unreasonable and unjust; but as to rates complained of as unreasonable, unjust and unlawful, and so found to be in the case under consideration the Commission can make no provision or order for their reduction which the courts are required to enforce or the carriers are obliged to obey. Having, in the light of these decisions given the facts due consideration, we ascertained, found and reported the rates which would be reasonable from and to St. Louis, Springfield and Seligman, Mo., to and from Eureka Springs, Ark., and have recommended that the carriers reduce and conform their charges to the facts so found and reported. This recommendation may impress the carriers only as may seem to accord with their own interests, since in the present state of the law, as declared by the court, common carriers have the power to establish, change and exact rates independent of the judgment of the Commission.

The court concedes to the Commission power under the Interstate Commerce Act "to determine what, in reference to the past, was reasonable and just." In the case under consideration, the Commission has determined that the rates complained of and which are now charged by the defendants were in the past and are now unjust, unreasonable and in violation of the statute. The duty of notifying and requiring the defendants to cease and desist from such violations is enjoined upon the Commission by the following provision of the Act:

"Sec. 15: That if in any case in which an investigation shall be made by said Commission it shall be made to appear to the satisfaction of the Commission, either by the testimony of witnesses or other evidence, that anything has been done or omitted to be done in violation of the provisions of this Act, or of any law cognizable by said Commission, by any common carrier, or that any injury or damage has been sustained by the party or parties com-

plaining, or by other parties aggrieved in consequence of any such violation, it shall be the duty of the Commission to forthwith cause a copy of its report in respect thereto to be delivered to such common carrier, together with a notice to said common carrier to cease and desist from such violation."

An order will issue in accordance with these conclusions.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD
COMPANY

v.

THOMAS C. PLATT AND MARSDEN J. PERRY, Receivers of
the New York & New England Railroad Company.

(No. 383.)

Decided June 26, 1897.

1. Rates established by a single carrier "upon its route" and shown on individual tariffs, and joint rates "over continuous lines or routes operated by more than one carrier" shown on joint tariffs, are the rates authorized by section 6 of the Act to regulate commerce, and required to be posted at stations and filed with the Commission. The word "joint," and the express reference in the statute to the *several* carriers over a continuous line and the joint tariffs which they *establish*, import concurrence and assent in fixing aggregate rates for a combined service, as distinguished from the separate rates of a single carrier for transportation "upon its route."
2. Joint rates may be so divided between the carriers that each receives less than its established local rate, or so that the full local charge is secured by one or more of the carriers, the other party or parties accepting less than local rates, but whatever the basis of division, the essential feature of such rates is that the connecting carriers have agreed or mutually consented to carry traffic over the connecting line for a less aggregate charge than the sum of their established local rates.
3. In the absence of some agreement or understanding with a connecting line by which a joint tariff of rates is authorized, a given carrier cannot lawfully publish or apply any other rates than those which it fixes for transportation between points reached by its railroad; and the rates so fixed are the only lawful rates which such carrier can charge for any transportation service which it may perform, whether the traffic carried is destined to points on its own road or to points on the line of some other carrier.
4. A carrier which has published and filed its rates as the law requires may combine such rates with the lawfully established rates of a connecting carrier or carriers, and thus announce the aggregate amount for which traffic will be transported from points on its railroad to points on the line of such connecting carrier or carriers; but one carrier cannot lawfully add to the duly established rates of another carrier any amount it pleases less than its own local rates, and publish and use that sum as a through rate to

points on the line of such other carrier without its consent. Such a through rate is not a "joint rate," for joint rates can be made only by concurrence or assent; nor is it a combination rate, for one of its component parts has no legal existence or sanction as a separate or local charge; there must be lawful rates upon each of the roads before there can be a lawful combination of rates.

5. While through routes and reduced through rates, which would facilitate the movement of traffic and thereby benefit the public, are in some cases prevented by the unreasonable refusal of carriers to unite in granting such facilities, and the statute was apparently designed to require connecting carriers to join in the formation of through routes at lower aggregate rates than a combination of locals, the machinery necessary to accomplish that purpose is not provided, and the Commission has repeatedly called attention to this defect in the law.
6. Defendant published a schedule purporting to be a joint tariff of rates on coal from a point on its road to a number of destinations reached by the complainant railroad company, whereby the complainant company received its full local charges to said destinations from junction points with defendant's road, and the defendant accepted the remainder, which was in each instance less than its established local rate from the place of shipment to the point of connection. Complainant, which also carried coal to the same destinations by a longer route over its own rails, thereby securing greater compensation than was afforded from coal coming to it by defendant's road, refused to unite in the rates named by defendant in said so-called joint tariff, and protested against the use of such rates by a connecting carrier as unauthorized and unlawful for want of mutual consent. *Held:* That the complaint should be sustained and the defendant company be required to cease and desist from publishing or applying through rates to points on complainant's lines which are less than the sums of their respective local charges.

Aldace F. Walker for complainant.

F. A. Farnham for respondent.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, Commissioner:

It is alleged in the complaint in this proceeding that the Receivers of the defendant company, by George F. Randolph, their General Traffic Manager, "on or about January 26, 1894, issued a sheet purporting to be a special interstate *joint* tariff on coal, naming rates on coal from Newburgh, New York," a station on the defendant road, to a considerable number of towns on the lines of the complainant company in the State of Connecticut, such rates being applied *via* several junction points where the

two roads intersect; that the defendant company and its receivers have, "since the issue of said so-called joint tariff on coal," used the same as a legal tariff and are now undertaking to do business under the rates named therein; that the complainant has never consented to the issue of said tariff, and that no rates on coal from Newburgh, by way of the New York & New England road to points on complainant's lines, have been authorized by it, "other than the local rates of the two roads from Newburgh to points of connection and from said points of connection to the destinations to be reached;" and that in "said so-called joint tariff" the defendant company "charges for the haul upon its road from Newburgh to the connection points between the two roads less than its local tariff rates from Newburgh to said points of connection."

In its prayer for relief the complainant asks, "That the New York & New England Railroad Company, and the receivers thereof, be required to file with the Commission a copy of any contract, agreement or arrangement, it or they may claim, to have with the New York, New Haven & Hartford Railroad Company in relation to the traffic covered by the tariff" in question, "warranting the issue of said tariff, or otherwise show authority for such issue, and failing to file a copy of any contract, agreement or arrangement, or show satisfactory authority for the issue of said tariff, that the Commission will, (1) order said tariff canceled forthwith, and, (2) will order the New York & New England Railroad Company and the receivers thereof, to desist from further undertaking to do business upon the rates named in said tariff, or upon any other terms than the sums of the local rates of the two companies in the absence of any authority by competent officers of the two railroads for the issue of a joint tariff under contract, agreement or arrangement filed with the Commission in accordance with the provisions of section 6 of the Act to Regulate Commerce."

All the allegations of the complaint are admitted by the answer except the allegation that the complainant has never consented to the issue of the tariff in question. In answer to this allegation reference is made to the fact that under said tariff the rates from points of connection to destinations on complainant's road are its regular published local rates, and the answer avers "that

the New York, New Haven & Hartford Railroad Company has consented to the issue of said tariff, and has authorized the same, by making and holding out to the public its tariff rates from the various junction points in question to the various points on the line of said New York, New Haven & Hartford Railroad Company mentioned in said joint tariff." And in connection with the admitted fact that defendant's proportions of the through or combined rates are less than its local rates from Newburgh to points of connection, it is alleged "that the amounts so received by it are its proportions of the charges for *contracts for through transportation*, which contracts it is placed in position to make by the action of the New York, New Haven & Hartford Railroad Company in making and holding out its local tariff rates as aforesaid." It is further claimed by the defendant "that, in publishing and doing business under the joint tariff complained of, it is merely following a custom which is, and for a long time has been, universal among the railroads throughout the country, which is not in any respect contrary to the provisions of the Act to Regulate Commerce or to the spirit of said Act, which under no circumstances can be injurious to any carrier or to the public or to any portion thereof, or can affect any discrimination against any carrier or any portion of the public, but which on the other hand must in every case be advantageous to the public."

The controversy arises upon facts which are wholly undisputed and which are found as follows:

FACTS.

1. The New York, New Haven & Hartford Railroad Company and the New York & New England Railroad Company are severally interstate common carriers by rail and concededly subject to the Act to Regulate Commerce.

2. Prior to the commencement of this proceeding the defendants Thomas C. Platt and Marsden J. Perry had been duly appointed receivers of the New York & New England Railroad Company, and as such receivers they were in possession of and operating the road of said company when this case was heard and submitted.

3. On or about January 26, 1894, the General Traffic Manager of said company and the Receivers thereof issued the tariff in question, the material portion of which is as follows:

NEW YORK & NEW ENGLAND RAILROAD.

SPECIAL INTERSTATE JOINT TARIFF ON COAL, FROM NEWBURGH, N. Y.,

To the Following Points on the

NEW YORK, NEW HAVEN & HARTFORD RAILROAD.

	To	Per Gross Ton.
Via Waterbury.	Union City, Connecticut.....	\$1.45
	Nanyatuck, ".....	1.45
	Beacon Falls, ".....	1.47
	Seymour, ".....	1.47
	Oakville, ".....	1.56
	Watertown, ".....	1.56
	Waterville, ".....	1.49
	Thomaston, ".....	1.57
	Campville, ".....	1.70
	East Litchfield, ".....	1.70
	Farrington, ".....	1.70
	Burrville, ".....	1.70
	Winsted, ".....	1.70
Via New Britain.	Berlin, Connecticut.....	\$1.47
	East Berlin, ".....	1.47
	Middletown, ".....	1.47
	Middlefield, ".....	1.50
	Portland, ".....	1.52
	Cobalt, ".....	1.52
	East Hampton, ".....	1.52
	West Chester, ".....	1.57
Via Hartford.	Windsor, Connecticut.....	\$1.45
	Windsor Locks, ".....	1.47
	Suffield, ".....	1.47
	Warehouse Point, ".....	1.47
	Thompsonville, ".....	1.47
	Newington, ".....	1.45
	Wethersfield, ".....	1.54
	South Wethersfield, ".....	1.54
	Rocky Hill, ".....	1.54
	Cromwell, ".....	1.55
	Higganun, ".....	1.55
	Haddam, ".....	1.55
	Arnolds, ".....	1.55
	Godspeeds, ".....	1.55
Via Willimantic.	Chestnut Hill, Connecticut.....	\$1.67
	Colchester, ".....	1.69
	Turnerville, ".....	1.69

Charges must be prepaid.

GEORGE F. RANDOLPH,

General Traffic Manager.

Boston, Jan. 26, 1894.

4. After the issue of said tariff the defendant company and its receivers used the same as an interstate tariff on coal, and were engaged in transporting that commodity at the rates named in such tariff at the time this case was heard and submitted.

5. The complainant company has never authorized the issue of this tariff or consented to the through transportation of coal at the rates named therein.

6. No rates have been established for the transportation of coal from the junction points of the two roads to points on complainant's lines named in said tariff, except the local rates of the complainant company.

7. The rates from Newburgh to destination points named in said tariff are less than the sums of the local rates of the two roads from Newburgh to such destinations respectively; and as the complainant company received in every case its full local rate from the junction points to the several destinations, it follows that the defendant road received less for the haul from Newburgh to the several junctions than its own local rates from Newburgh to such junctions respectively.

8. The amount received by the defendant road for the haul to any given junction point was not uniform but varied according to the destination of the shipment. For example, the charge from Newburgh to Waterbury was 85 cents on coal destined to Union City and 67 cents on coal destined to Beacon Falls, the *local* rate from Newburgh to Waterbury being \$1.20.

9. The complainant company carries coal, which it receives from connecting carriers at the city of New York or in that vicinity, to the various destinations named in the tariff in question, and has established and published tariffs for such carriage. When coal reaches these destinations by this route the complainant secures a much longer haul over its own rails and consequently a much greater compensation than it obtains when coal reaches the same places *via* Newburgh and the junction points named in said tariff.

10. The tariff in question does not disclose how much either carrier receives for its share of the through transportation, but gives only the aggregate rates from Newburgh to the various named destinations, and there appears to be no publication in any form or manner which shows the separate rates of the defendant company for its portion of the haul in such cases. It is to be observed, however, that this tariff is signed only by the traffic manager of the defendant company and contains nothing implying that its issue was authorized by complainant, except the use of

the word "joint" in connection with the announcement of through rates to points on complainant's line. While the publication of this tariff was without authority from the complainant, there appears to have been no intention on the part of the defendant company or its receivers to misrepresent the facts or otherwise mislead the public.

CONCLUSIONS.

The Act to Regulate Commerce mentions two kinds or classes of rates, namely, rates established by a single carrier "upon its route," and *joint* rates "over continuous lines or routes operated by more than one carrier." Is the tariff in question a tariff of joint rates? The 6th section of the Act contains this provision:

"In cases where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several carriers operating such lines or routes *establish joint tariffs* of rates or fares or charges for such continuous lines or routes, copies of such joint tariffs shall . . . be filed with said Commission."

The use of the adjective "joint" in this connection implies that the tariff to which it is applied is the result of agreement or mutual consent, and this implication is strengthened by express reference to the *several* carriers over a continuous line and the joint tariffs which they *establish*. These terms import concurrence and assent in fixing aggregate rates for a combined service, as distinguished from the separate rates of a single carrier for transportation "upon its route."

It was held by the Commission in *Lehmann, H. & Co. v. Texas & P. R. Co.* 5 I. C. C. Rep. 44, 3 Inters. Com. Rep. 706, that a schedule of rates from New Orleans to San Francisco, designated a "joint freight tariff," issued by the New Orleans Traffic Association, the companies composing which operated roads leading out of New Orleans *but not extending to Kansas City*, "did not establish as provided by section 6 of the Act to Regulate Commerce a joint tariff of rates and charges on a continuous line from New Orleans to Kansas City," between the roads of said association or any of them and the outside road or roads over which the transportation had to be continued from the termini of the former

roads on to Kansas City, *the latter roads not having united in said tariff*. In a subsequent decision rendered in September, 1894: "*In the Matter of the Form and Contents of Rate Schedules and the Authority for Making and Filing Joint Tariffs*," (6 Inters. Com. Rep. 267), the Commission, speaking of the joint tariffs referred to in section 6 of the Act, stated its views as follows:

"Such tariffs necessarily imply an agreement between two or more carriers by virtue of which they offered their *united* services at the rates named therein. They must have entered into contract relations with each other, by express stipulation or mutual understanding, which impose upon the several parties thereto the obligation to accept, for the transportation proposed by them, the aggregate charge stated in their advertised schedules. . . . If one carrier files a tariff purporting to establish joint rates with other carriers when no agreement therefor—express or implied—exists between them, such carrier transcends its authority, misrepresents the facts and misleads the public."

As complainant has not agreed to the through rates named in the tariff in question nor assented to its publication, we hold that it is not a "joint tariff" within the meaning and contemplation of section 6 of the Act.

In this connection reference may properly be made to other provisions of this section, as follows:

"That every common carrier subject to the provisions of this Act shall print and keep open to public inspection schedules showing the rates and fares and charges for the transportation of passengers and property which any such common carrier has established and which are in force at the time *upon its route*. The schedules printed, as aforesaid, by any such common carrier shall plainly state the places *upon its railroad* between which property and passengers will be carried, and shall contain the classification of freight in force, and shall also state separately the terminal charges and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates and fares and charges."

"It shall be *unlawful* for such common carrier to charge, demand, collect or receive from any person or persons a greater or

"less compensation for the transportation of passengers or property, or for any services in connection therewith, *than is specified in such published schedule of rates, fares and charges as may at the time be in force.*"

Rates upon a carrier's own road, therefore, which are not published in accordance with these provisions, are forbidden by the Act, no matter how reasonable or advantageous to the public they may appear to be. This requirement of publicity, as the Commission has frequently observed, is obviously of great importance if not absolutely essential to the enforcement of the substantive provisions of the statute. As the tariff complained of does not show the charges of the defendant company for the haul "upon its route," it must for that reason also be declared illegal.

We are further of the opinion that the *rates* under consideration—independent of the form or contents of the *tariff* in question—are unauthorized by the Act. The defendant company is, of course, at liberty to make and publish any rates it chooses for transportation "upon its route," but such rates must be uniform for the same service and available to all shippers alike. Whatever rates it sees fit to accord are rates for carriage *on its railroad*, and must be applied as well to traffic destined to points on connecting roads as to traffic delivered at its own stations. In the absence of some agreement or understanding with a connecting line by which a joint tariff is authorized, a given carrier cannot, in our judgment, lawfully publish or apply any other rates than those which it fixes for transportation between the points reached by it; and the rates so fixed are the only lawful rates which such carrier can charge for any transportation service which it may perform, whether the traffic carried is destined to points on its own line or to points on the line of some other carrier.

It is not doubted that an individual carrier, whose rates have been published and filed as the law requires, may combine *those rates* with the lawfully established rates of a connecting carrier or carriers, and thus announce the aggregate amount for which traffic will be transported from points on the line of such individual carrier to points on the line of a connecting carrier or carriers. In such case the through rate named is the sum of two or more separate or local rates, each of which has been legally established for the separate service which each of the carriers under-

takes to perform. As through rates of this character are not the result of agreement between connecting lines, but have their origin in separate and independent action, it is plain that their announcement and application by one carrier requires no agreement or consent by any other carrier. This appears to be precisely what was meant by Judge Cooley in his letter of May 24, 1890, wherein he said:

“Where rates are exclusively over the line of one company, the concurrence of another is, of course, not necessary; but I do not understand that there is anything improper or illegal in any carrier *that has established any rates upon its own line* giving rates to points upon the lines of other roads, making those rates by the addition of its own legally established rates to those which prevail and which in the same way are legally established upon the lines of the other road. In other words, a combination of rates *made in that manner* is perfectly legal, and the publication of the combination by any one of the carriers, although it has not been agreed to between them, might not only be legal but a great convenience to the public. Now I do not understand whether the St. Louis & San Francisco Railway, in the new rate sheet issued by them, assumed to make any change in the rates established by any other company. It is consistent with the rate sheet that all they did was to reduce their own local rates, and then in making rates to and from Chicago to add the prevailing legal rates beyond their own line. If this was all they did, *and if they published their own reduced rates legally*, they would not seem to have violated the law. . . . Such a rate is not a joint rate, it is a mere combination of local rates. The rates combined are supposed to have been legally published.”

But it by no means follows that one carrier can add to the duly established rates of another carrier *any amount it pleases*, less than its own local rates, and publish and use *that sum as a* through rate to points on the line of such other carrier. Such a through rate is neither a joint rate nor a combination rate. It is obviously not a joint rate, for joint rates can be made only by the concurrence or assent of connecting carriers. It is not a combination rate, for one of its component parts has no legal existence or sanction as a separate or local rate. There must be lawful rates upon each of the roads before there can be a lawful combination of

rates. Every road is free to make its own rates, but no road of its own accord can charge more or accept less than its own rates for any service it may render. The local rates of one road may be combined with the local rates of another road for the purpose of naming through rates which are merely the sums of two or more local rates, and no other or different through rates can be legally applied except by the mutual consent of connecting roads or an implied agreement arising from their relations and previous course of business. A through rate made by such concurrent action is the "joint" rate mentioned in the statute. It may be a rate in the division of which each of the participating parties receives less than its established local rates, or it may be so divided that one or more of them receives full locals, the other party or parties accepting less than local rates. Whatever the basis of division, the essential feature of a joint rate is that connecting roads have agreed or mutually consented to carry traffic from points on one road to points on another road for an aggregate charge which is less than the sum of their local charges between the same points. Without such agreement or consent neither of them has authority to name or allow a lower through rate than the combination of their locals.

This construction of the law seems to be in accord with the views heretofore expressed by the Commission. In *Chamber of Commerce v. Flint & P. M. R. Co.* 2 I. C. C. Rep. 553, 2 Inters. Com. Rep. 393, the rate in question was from Minneapolis to eastern seaboard points. This rate was made by adding the local rate from Minneapolis to Milwaukee to a joint rate less than the sum of the locals from Milwaukee to eastern points. The goods were shipped on a through bill of lading which specified the total through rate and the divisions received by each road. It was contended that since the rate from Minneapolis to Milwaukee was a local rate the entire rate from Minneapolis to the eastern point was not a through rate, but that the through rate applied only from Milwaukee to the eastern destination. The Commission held otherwise, and in discussing the question said on page 566 :

"The through bills of lading, the fixed total rate, the waybill, the expense bill, the course of business between the parties by which the contract of shipment was performed from the point of

origin to destination made it a through rate. Names are nothing in such a transaction. The law looks at the elements and substance of the transaction itself. The through bill of lading issued by the initial carrier, in which it was shown what the rate was, and that the carriers would transport the freight from Minneapolis to Milwaukee and east to destination, was a contract with the shipper for a through rate. The proposal of the initial carrier was accepted by the defendants and their connecting lines when they took the freight at Milwaukee and transported it to New York upon their agreed rate of 25½ cents per hundred pounds, and it then became an executed contract, and performed according to the well-known and published course of business of these carriers. The shipper had contracted for the through rate, and had received it."

It will be noticed that here the previous course of business between the carriers was held to constitute an implied agreement for a through rate. Later in the case (page 568 [398]), the Commission further said:

"Through rates, like any other agreements that parties competent to contract may make, admit of very great variety in the forms they may assume. In one shape or another, they are in very general use upon American roads, and in the case of long hauls are one of the necessities of the situation. Commerce and trade require them, and competition compels them. Such rates, when reasonable and fairly adjusted in their relations to local business, are greatly favored in the law, because they furnish cheapened rates and greater facilities to the public, while, at the same time, they give increased employment and earnings to a larger number of carriers."

Here it will be observed that the through rate is treated as an agreement between different carriers.

In discussing the case of the *Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co.* 3 I. C. C. Rep. 1, 2 Inters. Com. Rep. 454, the Commission said on page 17 (460):

"In respect to this question the Commission in the present case has for the first time been required to express its views on the construction of the law; and it believes that while it was apparently the intention of Congress to require the establishment and maintenance of a through route with through rates, in cases like

the one now under consideration, nevertheless the Act in its present form, and in the absence of the necessary machinery, is inadequate to satisfactorily accomplish the result without the co-operation of carriers in arranging for the division of rates and other necessary agreements."

In *Chicago, R. I. & P. R. Co. v. Chicago & A. R. Co.* 3 I. C. C. Rep. 450, 2 Inters. Com. Rep. 721, on page 462 (725) it was said:

"We have no doubt of the right of carriers to agree upon through rates which shall be different from and lower than the sum of the locals. The principle has frequently been considered and applied in cases passed on by the Commission."

In *Re Clark*, 3 I. C. C. Rep. 649, 2 Inters. Com. Rep. 797, it was said at page 650 (797):

"It is indispensably necessary in interstate traffic that the consent of each of several lines over which freight is to be carried should be had in the establishment and operation of what is called 'through rates.' Such rates are the subject of agreement, and for their existence depend upon agreement."

It may be said that in these cases the term "through rate" is incorrectly used, as the rates referred to are more properly described as "joint rates." Such a distinction, however, cannot always be observed, since there may be a through rate which is made by the combination of local rates as well as a through rate which results from an agreement, express or implied, for a joint tariff. The point of importance is that *such an agreement* is found in every case, and is involved in every definition of terms, when the aggregate rate is less than the sum of local rates.

It is argued with much earnestness that as the method of rate-making in question is not expressly prohibited, and as that method is alleged to operate to public advantage, it ought to be sanctioned by the Commission. We are unable to yield assent to this proposition, because the practice sought to be approved appears to be forbidden by necessary implication from the provisions of the statute. The first paragraphs of section 6, as amended March 2, 1889, apply exclusively to the rates which each carrier has established for transportation "upon its route." They require the printing and posting of schedules, fix the time of notice of any advance or reduction in rates, and prescribe the manner in

which proposed changes shall be made known to the public. The fourth paragraph—in the language above quoted—enjoins the observance of the rates so established by making it unlawful for any such carrier to charge a greater or a less sum for its services than is specified in its published schedule.

This broad and unqualified prohibition constitutes the general rule of the statute. Read in connection with the preceding provisions, it seems to deny the right contended for by the defendant company. If this comprised all the authority and obligation of carriers in regard to rates and schedules, it could hardly be claimed that the rates under consideration are authorized or permitted by the Act. But the subsequent paragraphs of this section, so far as they are material to the present question, merely qualify the rule in one respect, and are in the nature of an exception to its plain and positive requirements. Their effect is to allow connecting carriers, by agreement or mutual consent, to establish joint rates for joint and continuous service which are lower than the sums of their local rates. The exception created by these provisions sanctions a recognized and definite class of through rates, namely, those resulting from the concurrent action of two or more carriers, but it furnishes no warrant for another and different class of rates not covered by its terms or included within its obvious purpose. As the exception confers no authority for the method of rate-making complained of in this case, that method must be deemed unlawful under the prohibition of the general rule.

Nor are we convinced that the rule ought to be otherwise. In our judgment it may well be doubted whether the principle of rate-making for which the defendant contends would on the whole promote the interest of the public or the railroads. If it be admitted that one carrier can make through rates to points on the line of another carrier, without the latter's consent, which are less than the sum of their respective locals, it must follow that a given carrier can have an indefinite number of rates to any point of junction with another carrier, those rates varying with the different destinations of the traffic beyond such junction point. Upon that theory there might be as many rates, for the same distance and the same traffic, as there were destinations for that traffic; and it would not matter by what means the transporta-

tion was effected after leaving the line of the initial carrier. It might be further conveyed by rail, or by water, or hauled in wagon-loads to final destination. The cars in which the traffic was originally loaded might go through, as in this case, or there might be unloading at some point on the initial line and transfer to other and different vehicles for the purpose of continuing the transportation.

It is the essence of defendant's contention, as appears to us, that a carrier subject to the Act may accept less than its established local rates, or at least publish and use a through tariff which gives it less than such local rates, on any traffic and to any point on its line, without the consent of any other carrier, provided that traffic is destined to some point beyond or off the line of such carrier. If this can lawfully be done, the converse proposition is necessarily involved and equally correct, that a carrier subject to the Act may, without the consent of any other carrier, issue and apply a tariff under which it receives less than its published locals on any traffic and from any point on its line, provided that traffic originates at some point beyond or off its own line and is brought to it by some other carrier. In other words, such a carrier may have an indefinite number of rates on the same traffic and between the same points on its line if the transportation service on that traffic is not wholly performed by it, but partly performed by other and varying agencies according as such traffic may have different points of origin or destination. It would also follow that any carrier which has established, in the manner required by law, rates of transportation "upon its route" may be made an unwilling party to through rates of endless variety, at the option of other carriers which are under no restraint except their own interest. Such a rule of rate-making is open to many objections and liable to lead to many abuses. Its operation might be beneficial in some instances, but in a majority of cases we apprehend it would be more likely to aid the discriminating practices which the Act seeks to prevent. It is a rule which finds little support in any just consideration of public advantage. If one carrier can make through rates over the lines of other carriers without their consent, there is no practical limit to the extent to which that right may be exercised. If the mere circumstance of varying origin or destination of traffic justifies varying charges for

the same service, and if a given carrier can make through rates whenever and wherever it pleases, provided only that participating carriers subject to the Act receive their established locals, a most effective means is provided for the disturbance of rates and rate conditions. And this means could be employed by an unscrupulous or vindictive carrier to the serious injury of its competitors without benefiting the public. On the whole, and in the present state of the law, we believe it a wiser policy, and one more consistent with public interest, to deny the right contended for, and to confine the making of through rates—which are less than a combination of locals—to those cases in which they are established by the agreement or consent of the interested carriers.

It frequently happens, of course, when through rates are made by the joint action of connecting lines, that certain carriers receive different and varying rates for substantially the same service. In such cases, however, the number of different rates and the extent of their variation are controlled by the express or implied agreement of the several carriers. Where consent is necessary to the adoption of through rates, they will be limited to such as all the parties presumably desire to establish. Each of them possesses a veto power over the others in this regard, and may thus prevent the application of through rates in which any party is unwilling to participate. This operates as a check upon indiscriminate rate-making, and tends in the main, as we believe, to stability of rates and the maintenance of suitable rate relations. But it is a very different matter, tending to very different results, to license every carrier to make through rates at pleasure, in any direction and between any points, with no other limit or restraint than the payment to a connecting carrier of the local rates which that carrier has established.

Undoubtedly there are some cases where through routes and reduced through rates, which would facilitate the movement of traffic and thereby benefit the public, are now prevented by the unreasonable refusal of carriers to unite in granting such facilities. That there is no remedy for such refusal is a defect in the law, to which the Commission has repeatedly called attention. While the statute was apparently designed to require connecting carriers to join in the formation of through routes at lower aggregate rates than a combination of their locals, it failed to

provide the machinery necessary to accomplish that purpose. But the correction of this defect implies the exercise of some public authority which can investigate the circumstances of each case, allow the parties to a proposed through route an opportunity to be heard, and fairly determine the matter—including, if need be, the aggregate rate and divisions thereof—with due regard to the interests of the several carriers as well as the public. Such a scheme for establishing compulsory through rates would be surrounded by proper safeguards and its operation limited by proper restrictions. It is quite another thing to allow any carrier of its own volition to use the published rates of another carrier, against the latter's objection, and thereby make such through rates, less than the aggregate of locals, as the carrier exercising that privilege may deem for its advantage. As the law now stands we must either deny the right to make through rates which are less than the sums of locals, except where such rates are made by agreeing or consenting carriers, or else we must sanction the principle of rate-making here in question, with all the logical results which that principle involves. We are constrained to adopt the former alternative as the one most in harmony with the spirit and purposes of the Act.

It is likewise our belief that the views here expressed are not greatly at variance with actual practice. The defendant company asserts that, in publishing and issuing the rates complained of, "it is merely following a custom which is, and for a long time has been, universal among the railroads throughout the country." But we apprehend that such a statement is not warranted by the facts. That published tariffs in many cases sustain defendant's theory is not denied, but in most of those cases we think it will be found that the through rates themselves, whether lawfully established or otherwise, are in fact agreed to by all the participating carriers. In nearly every instance they are applied by virtue of open consent, long acquiescence, previous course of business, or other circumstances which imply agreement. But we are dealing with the case where a complaining carrier refuses to unite in through rates less than a combination of locals, and protests against the use of such rates by a connecting carrier as unauthorized and unlawful for want of mutual consent. That is

the precise question presented, and the one intended to be decided.

It follows from what is stated above that the complaint in this proceeding should be sustained, and that an order should be made herein requiring the defendant company to cease and desist from publishing or applying through rates to points on complainant's lines which are less than the sums of their respective locals.

CLEMENTS, *Commissioner*, dissenting:

The New York & New England Railroad Company, the defendant in this case, has a line of railway from Newburgh, N. Y., which crosses lines of the complainant, the New York, New Haven & Hartford Railroad Company, at Waterbury, New Britain, Hartford and Willimantic, in the State of Connecticut. Coal is transported from Newburgh over the line of the defendant to those four junction points and thence over the lines of the complainant to various stations on the latter lines. The defendant publishes what it designates a "special interstate *joint* tariff on coal" from Newburgh *via* the junction points named to points of destination on the complainant's several lines, naming aggregate through rates. The rates so named are combinations of rates established by the defendant for the hauls on its line from Newburgh to the junction points, Waterbury, New Britain, Hartford and Willimantic, which are less than its regular local rates to those points, with the established locals of the complainant from those points to the points of destination on the lines of the latter. The defendant exercises what it claims to be its right to fix the rates on its own line at less than its locals, at the same time allowing the complainant its full local rates. The defendant bases this alleged right upon the ground that the hauls from Newburgh to points of destination on the lines of the complainant are through hauls and that it, therefore, is authorized to charge as its proportion of the through rates sums less than its locals for the same distances. It is admitted that the coal is hauled through in the cars in which it is originally loaded at Newburgh, without "trans-shipment," to the points of destination on the complainant's lines and under through bills of lading. The only available routes for the shipment of coal from Newburgh to the territory to which these rates apply is over the line of the defendant to the various junction points named, and thence over the lines of the complainant, and

the shippers at Newburgh testified that they could not ship coal over these routes except under rates less than the sum of the locals of the two roads. The complainant has a line of railroad from New York or Jersey City over which it transports coal from Jersey City to the points of destination named in the defendant's tariff of rates. The complainant and the defendant are thus in *competition* in the coal traffic to those points and the complainant charges that the defendant's tariff of rates is "seriously injurious to the complainant in depriving it of the long haul from Jersey City without in any way benefiting the public."

The *aggregate* through rates named in the defendant's tariff were not agreed to by the complainant and that tariff does not, on its face, purport to be issued by authority of the complainant. The defendant contends, however, that the complainant impliedly, at least, "has consented to the issue of said tariff and has authorized the same by making and holding out to the public its tariff of rates from the various junction points in question to the various points on the line of complainant mentioned in said joint tariff."

The aggregate rates in the defendant's tariff not having been agreed to by complainant, are not, strictly speaking, "*joint*" rates and are therefore improperly so designated. The proportions of the through rates charged by the defendant for the hauls on its own route or line are not stated in the tariff and are not otherwise published, and appear, as held by the Commission in this case, to be violative of that provision of the law requiring the publication of rates on interstate commerce, and declaring unlawful the exaction of rates other than those published. The prayer of the complainant, however, is not only that the tariff of rates in question be canceled and declared unlawful, but that the defendant be ordered "to desist from further undertaking to do business upon the rates named in said tariff, *or upon any other terms than the sums of the local rates of the two railroads.*" The latter branch of the prayer requires consideration of the question, whether if properly published respondent's rates for the hauls on its own road would be lawful as proportions of the through rates in question.

If duly published, and otherwise lawful, it would seem that they might be made parts of what are termed "combination" as

distinguished from strictly "joint" rates. In *Lehmann, H. & Co. v. Texas & P. R. Co.* 5 I. C.C. Rep. 44, 3 Inters. Com. Rep. 706, it is said, "No *joint* tariff of rates or charges having been established in accordance with the statute on the continuous line operated by the several companies, the sum of the local rates was the only rate over said continuous line from New Orleans to Kansas City, *which had been published*, and filed in conformity with the statute;" and because the locals were the only rates which had been so published and filed, it was held that the sum of the locals was the lawful rate in the absence of a joint rate. The *sum* of the locals had not been published and filed in that case, but only the locals separately, and this, it was held, made their combination as a through rate legal. If this be so, I can perceive no objection in principle to the combination of a duly filed and published rate for a carrier's portion of a through haul less than its local for the same distance with the legally established rates of the other carriers of the through line, if such reduced rate be not repugnant to the statute (a point hereinafter considered) as being discriminatory or otherwise in itself unlawful. In this connection, I quote the following extract from a letter written May 24, 1890, by the then Chairman of this Commission, Judge Cooley, defining the difference between *joint* and *combination* rates:

"Where rates are exclusively over the line of one company the concurrence of another is, of course, not necessary; but I do not understand that there is anything improper or illegal in any carrier that has established any rates upon its own line giving rates to points upon the lines of other roads, making these rates by the addition of its own *legally established rates* to those which prevail and which in the same way are *legally established* upon the lines of the other road. In other words, a combination of rates made in that manner is perfectly legal, and the publication of the combination by any one of the carriers, *although it has not been agreed to between them*, might not only be legal but a great convenience to the public. Now I do not understand whether the St. Louis & San Francisco Railway, in the new rate sheet issued by them, assumed to make any change in the rates established by any other company. It is consistent with the rate sheet that *all they did was to reduce their own local rates*, and then in making rates to and from Chicago to add the prevailing legal rates beyond their own line. *If this was all they did, and if they published their own reduced rates legally, they would not seem to have violated the law.* . . . Such a rate is not a joint rate, it is

a mere combination of local rates. The rates combined are *supposed to have been legally published.*"

Here is a distinct recognition of the right of one carrier without the assent of the other members of a line to reduce its "own local rates" for the purpose of forming lower through rates by combining such reduced locals with the legally established rates of such other carriers. If such reduction in local rates for the purpose named does not render them unlawful and the reduced rates are duly published, then, the only question as to rates of such a character is, whether they are lawful in themselves—that is, are they reasonable and just, and not unjustly discriminating? If the defendant's rates on its "own route" involved in this case are intrinsically unlawful, it would appear to be on the ground that they are an unjust discrimination against those who on strictly local shipments for the same haul are charged the higher local rate. For example, the local rate of the defendant, on a shipment of coal from Newburgh terminating at its connection with the complainant's road at Waterbury, is \$1.20 per ton, but where the shipment is from Newburgh *via* Waterbury on to Naugatuck on the complainant's road, the defendant charges for the haul from Newburgh to Waterbury 85 cents per ton. The contention of the defendant is that the lower rate in the latter case is lawful because in the language of its answer "the amount so received by it is its proportion of the charge for contracts for *through transportation*"—in other words, its proportion of a *through rate*. The Commission has repeatedly held, and it seems to be well settled, that it is not required under the law that the proportion a railroad shall consent to receive of a *through rate* should be the same as its local rate for transportation over an identical line. The commercial interests of the country, as well as the interests of the carriers, necessitates the acceptance, as a general rule, of a less sum as a proportion of a through rate than is charged as a local rate, and this involves no unjust discrimination against or undue prejudice to the local shipper or consignee, because there is in the two cases a substantial dissimilarity of circumstance and condition. In the first place, it is a well established fact, that the expense to the carrier of the service of transportation is much *greater per mile on local hauls* than on through hauls in car-loads without trans-shipment *en route* (*Board of Trade of Troy v.*

Alabama Midland R. Co. 6 Inters. Com. Rep. 1), and, in the second place, inasmuch as through traffic goes to a point beyond the destination of local traffic, it does not usually come into competition with the latter in a common market or give one shipper or consignee an undue advantage over another shipper to, or consignee at, the same locality. If in any case the traffic to the local and through points of destination should come in competition in the same market, the aggregate through rates being greater (when not excepted from the general rule of the statute) than the local, there could result no undue prejudice or disadvantage to the local shipper or consignee.

In the argument filed in behalf of the complainant it is correctly stated, that "the tariff in question is a *through* tariff from Newburgh to local points on the line of the New York, New Haven & Hartford, although not a *joint* tariff," and at the hearing counsel for complainant admitted that the cars engaged in this traffic "go through without trans-shipment." The shipments are "billed" through under the rates named in the tariff, which are carload rates. A through rate may be said to be any rate covering the transportation *through* from the point of shipment to destination, and may be either a *joint through rate* established by agreement of all the members of the through line, or a *combination through rate*, made up without express agreement of the duly published and otherwise "legally established" several rates of each member "upon its own route." I agree that, as stated in the opinion in this case, "there must be lawful rates upon each of the roads before there can be a lawful combination of rates." But I am of the opinion that a rate for a carrier's haul on "its own route," *less than its regular local for the same haul*, will, if duly established and published and not in itself objectionable, be a lawful rate for the purpose of such combination.

There is no prohibition in the law, express or implied, of such *combination through rates*. The fact that mention is made of only two kinds of rates, namely, rates established by a single carrier "upon its route" and *joint* rates "over continuous lines or routes operated by more than one carrier," cannot be held to amount to such prohibition. The rule that "the expression of one thing is the exclusion of another" does not apply. If so, combination through rates made up of the established local of each

member of the through line (which, it is conceded, are lawful, although not *joint*,) would be forbidden. "Local rates" are not expressly named in the law, but rates of a single carrier "*upon its route*." These words are comprehensive enough to embrace every description of rates on a carrier's own route or road—locals or proportions of through rates, whether such through rates be *joint* or only *combinations*.

The statute provides that in case joint through rates are established by connecting carriers, they shall be filed with the Commission and such publicity given them as the Commission shall prescribe. In making this provision it was contemplated that joint through rates, *being such as could be established by agreement only*, would be variant from the sum of the locals or legally established separate rates of the carriers, and that their proportions of such through rates would probably be less than their separate rates. Not being made up of the duly filed and published rates of the several carriers on their respective roads, it was necessary that provision should be made for the filing and publication of the aggregate through rate. It having been already required that the rates of a carrier on its own route should be filed and published, there was no necessity for a like requirement as to a mere combination of such rates.

It is conceded both by counsel for the complainant and in the opinion in this case that a rate through, made up of established locals may be quoted by an initial carrier without agreement with the other carriers of the line. The reason is that express agreement to a total through rate is not necessary where such through rate is simply the sum of the rates established by each carrier for the haul on its own route. Each carrier receives its own rate, and has no lawful ground of complaint when its right to regulate that rate is not infringed. The complainant justly claims that the defendant has no right to publish what purports to be a *joint* rate extending over a portion of the complainant's road without the latter's consent. The defendant with equal propriety, and *upon substantially the same principle*, denies the right of the complainant to dictate what shall be the rate of the defendant on its own route. Thus far both parties stand upon the same or analogous ground, but the complainant to a certain extent reverses its position, when it undertakes to say that the defendant's

charge for its part of the haul on its own route shall be its regular local. If the complainant may object to the publication without its consent of a through rate applicable to a part of its road as a *joint* rate, although such through rate allows the complainant its full local for the haul on its own line, with still greater force, it would seem, may the defendant demur to the right asserted by the complainant to a voice in determining what the defendant's rates shall be for its proportion of the through haul.

It is urged as an objection to the defendant's rates to points of connection with the complainant's lines, that they are not "uniform" like those generally known in railroad parlance as "proportional rates." "Proportional tariffs," as heretofore defined by the Commission, "establish rates of carriage which are lower between given points when the traffic has undergone transportation before reaching the first point, or is to be further transported after reaching the second, than the rates charged on like traffic which originates at one of such points and terminates at the other," and those rates are the same no matter what the point of origin of the shipment in the first instance or of destination in the second, and *without reference to the length of the through haul*, in either case. The defendant's rates, on the other hand, vary according to the destination of the traffic. For example, defendant's rate for its haul from Newburgh to Waterbury is 85 cents per ton on coal destined to Union City and 67 cents on coal destined to Beacon Falls. The aggregate combination through rate, however, made up of the defendant's rate and the complainant's local from Waterbury, is greater to the latter, which is the longer distance point, than to the former point. As a general rule, the greater the length of the haul, the greater the aggregate through rate and the less the rate per ton per mile. *Proportions of through rates for an identical haul over a road embraced in several through lines, therefore, may vary in each case with the length of the entire line.* In this respect, defendant's rates are more like ordinary proportions of through rates than such as are termed "proportional rates" above defined. In another material respect, also, the rates of defendant differ from such "proportional rates," namely, *in each separate instance they are established as a proportion of a designated through rate from the initial to a single and specified point of final delivery, and are*

not simply independent rates to a certain point or line—the Mississippi River for instance—to be added to rates on to *any* undesignated terminal point, whether ten miles or a thousand beyond. A “proportional rate” is not fixed as a part of any particular through rate, but is used as a standing proportion of through rates to *any number* of points beyond the point to which it is given. In that defendant’s rates are less than its local, vary with the length of the entire through route, and are parts of specified through rates, they have the substantial elements of proportions of ordinary through rates. Counsel for complainant stated at the hearing that he “had never been quite able to see why a ‘proportional tariff’ was not a good thing, saving a good deal of labor and trouble and being, as far as he could see, an easy and *proper way of getting at methods of making a through rate,*” and, in the argument filed by him for complainant, that if defendant’s tariff had been a proportional tariff, it “would not have required any agreement on the part of the complainant; but at the same time *might* have been illegal on the part of the defendant.” Without intimating an opinion as to the legality of proportional rates, it may be said that if proportional rates are a “proper way of getting at methods of making through rates,” defendant’s rates are at least equally so, and, if the former would require no agreement on the part of complainant to make them valid as parts of through rates extending over complainant’s road, I am unable to see why such agreement is necessary as to the latter. Defendant’s rates for its portion of the haul are, however, strictly analogous to proportions of ordinary through rates and their validity is sustainable upon the same grounds. They are the same on all shipments from Newburgh to the same place of consignment.

In case of joint through rates the law has regard to the reasonableness and lawfulness in other respects of the *entire* rate, and the carriers uniting in the rate may divide it between themselves in any agreed proportions. One or more may consent to accept proportions less than their respective locals for the same hauls, and the others may stipulate for their full locals. It is not denied, therefore, that the rates named in defendant’s tariff might be lawfully established by agreement between the two carriers, defendant’s proportions being less than its local and complain-

ant's proportions, its locals. If defendant's rates would be lawful *in themselves* as proportions of through rates fixed by agreement, why not as proportions of combination through rates? The only difference between the two through rates is that in the one case there is an agreement and in the other there is no agreement and, as we have shown, none is required. An *inherent* illegality cannot be cured by agreement and, therefore, if valid in themselves in the former case, defendant's proportions would seem to be equally so in the latter. It is clear that a combination through rate so made up accomplishes precisely the same purpose as a joint through rate made up in the same way.

It is claimed by the complainant, in the argument filed in its behalf, that the defendant's tariff of rates is "seriously injurious to the complainant in *depriving it of the long haul from Jersey City without in any way benefiting the public.*" If a carrier be deprived of a long haul over its own road by *legitimate competition* of another carrier under lawful rates over an equally available route, it does not appear that the injury resulting from such deprivation can be recognized as a valid ground of complaint. Inferentially the complainant concedes in the above statement of its position, that the question of benefit to the public is material, if *not controlling*, in this connection. Paragraph 2 of section 3 of the interstate commerce law requires carriers to "afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines." This provision of the law is taken from a similar English enactment and it is held both by this Commission and the English courts, that among the facilities contemplated are not only through routes but also through rates, and that the latter "become reasonable and proper when they are demanded in the *interest* of the public and when the *route of itself is fairly reasonable.*" *Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co.* 3 I. C. C. Rep. 1, 2 Inters. Com. Rep. 454; *Great Western R. Co. v. Severn & W. & S. Bridge R. Co.* 5 Ry. & Canal Traffic Cas. 174-189.

The route from Newburgh over the road of defendant to Waterbury and other connecting points named in the tariff is equally as available or "reasonable" from a distance standpoint as that from Jersey City or New York over the road of complainant. The distances from Newburgh and New York over

those roads, respectively, to such points of connection are given below.

From	To Waterbury.	To New Britain.	To Hartford.	To Willimantic.
	Miles.	Miles.	Miles.	Miles.
Newburgh,	79	108	112	143
New York,	91	104	112	130

The distances from Newburgh, it will be noted, are less to Waterbury and New Britain than from New York, they are the same from both points to Hartford, and only in the case of Willimantic the distance from New York is slightly less than from Newburgh. The average is exactly the same by both routes. As the distances on from the points of connection to destinations are over the complainant's road alone, they are, of course, identical, whether the shipments originate at Newburgh or New York. The total through distances by both routes are, therefore, not materially different, and in this particular they (the two routes) appear to be equally "reasonable." There is no charge, and no reason appears for holding, that the combination through rates from Newburgh named in defendant's tariff are unreasonable in themselves. Counsel for the complainant stated at the hearing that their reasonableness was not questioned.

Is it true, as claimed, that the defendant's tariff is "without benefit to the public?" The complainant bases this contention solely upon the fact disclosed by the evidence, that the coal shipped from Newburgh is sold to consumers at the various destination points at the same price as that shipped from Jersey City or New York. From this it is inferred that the consumers are not benefited, and hence there is no benefit to the public. The tendency of competition in a common market between traffic coming from different points or sources of supply and by different and competing routes, is to reduce prices, or at least to *prevent an advance*. The latter, if not the former, may be and probably is, the effect of the shipments from Newburgh. It, therefore, by no means follows, that because the coal from Newburgh is not cheaper in the market than that from Jersey City to New York, the consumers are not benefited by its shipment. The

consumers, however, do not constitute the entire public. The shippers are a part of the public and as much entitled to consideration as are the consumers or any other class of the people. The undisputed testimony of the shippers from Newburgh is, that they cannot ship their coal from Jersey City or New York to the destinations named in defendant's tariff; that the only available route for them is from Newburgh, and that they cannot ship by that route under a combination of the full local rates of the two roads.

As stated above, the Commission has held (as the English courts have under a like statute), that paragraph 2 of section 3 was intended to give the right to through rates as "reasonable and proper facilities for the interchange of traffic between the respective lines" of a through route. The English law provided a mode of procedure for the enforcement of this right when denied by one carrier to another. Our law has been held deficient in making no adequate provision for relief in such cases, and the Commission has repeatedly recommended its amendment in this particular. (*Little Rock & M. R. Co. v. East Tennessee, V. & G. R. Co.* 3 I. C. C. Rep. 1, 2 Inters. Com. Rep. 454; Second Annual Report, 70; Seventh *ib.*, 49; Eighth *ib.*, 59.) In our Eighth Annual Report, in commenting upon the importance of the right given by the statute, it is said:

"The absence of any provision in the statute by which the joint route and rate can be required" (enforced) "renders regulation halting and defective, deprives many carriers of a legitimate share of through traffic which would be created by reasonable through routes and rates, subjects trade and commerce to unnecessary restraints, and confines much of the business of numerous towns to their immediate localities. Whole sections of the country pay on some traffic the sum of rates to and from certain rivers arbitrarily used as dividing lines; places reached by a single road are often deprived of through rating facilities as to all classes of traffic, while junction points in their vicinity receive the benefit of joint tariff rates; other localities are, for carrier's reasons, denied through joint rating on some important kinds of goods while it is freely afforded on other articles between the same points." (8th Annual Report, 58.)

While it is held that no adequate mode for its enforcement is provided, the right to through-rating is recognized by the law,

and, being based upon reasons of such great weight, it would seem to be the duty of carriers to voluntarily acknowledge and observe it in proper cases. The complainant refuses to make joint through rates with the defendant and in doing so, when—as I believe—such rates are in the interest of the public and over a “reasonable” route, is acting in disregard of the manifest policy and purpose of the law. The particular in which it is held the Act to Regulate Commerce principally fails to provide a remedy in cases of denial of through rates, is, that it prescribes no method for “settling the amount of the divisions or apportionment of the through rate.” This, it will be observed, is not necessary as to combination through rates, as they are composed of the rates which each carrier has previously fixed for itself. Where a joint through rate is denied, the only through rate possible is such combination rate. The contention of the complainant, that a combination rate shall not be less than the sum of the regular local rates of the carriers established, for strictly local hauls, if sustained, will preclude the making of a through rate in this case as the evidence is that the traffic cannot be shipped under such a combination rate, and will virtually close the door in all cases to the very limited but only remedy open to a carrier where its right to through rating given by the statute is unjustly denied by another carrier.

The assent of the Commission to the method of rate-making in question is withheld, it is said in this case, “because the practice sought to be approved appears to be forbidden by necessary implication from the provisions of the statute.” This method is not uncommon in the practice of carriers throughout the country. It was in use at the time the Act to Regulate Commerce was passed. The defendant’s rates for the service on its own route entering into the combination of through rates in question, not having been published, as required by the statute, are, as heretofore stated, for this reason, unlawful. But neither they nor the combination of through rates thus effected contain any element which is not common in joint through rates which under the law have the full sanction of the Commission and the courts.

The object of the statute is to promote and not to restrain commerce. The requirements as to reasonableness, justice, relative equality and publicity contain all of the restraints of the law

upon carriers in the matter of rate-making, whether acting separately, each as to its own route, or jointly, as to their respective routes in combination. The rates in question, though defective in the matter of publication, contain nothing in conflict with these requirements.

The almost universal practice of carriers in diminishing the charge per ton per mile, as the length of the haul increases, whether on a single road or over two or more, though a discrimination or preference in favor of the longer distance shipment as compared with the shorter, if, within the limits of reasonableness, is, for the reasons elsewhere stated, not an undue discrimination or preference and therefore not unlawful. The discriminations in defendant's rates in question stand upon the same substantial reasons of justice and equity.

The rule laid down in this case, if generally applied, will necessarily result in greatly increased combination rates and seems to me to require an interpretation of the statute which will be in unreasonable restraint of commerce, destructive of fair competition and promotive of monopoly in the carrying business, detrimental to the public interests and contrary to the very object and principles of the law itself. Neither the provision of the statute nor its purposes raise any implication against the method of rate making in question but, upon the contrary, both necessarily favor it. It has received the recognition and sanction of the Supreme Court of the United States in the case of *Parsons v. Chicago & N. W. R. Co.* 167 U. S. 446, 42 L. ed. — also of the Circuit Court of Appeals, Eighth Circuit, in the case of the *Chicago & N. W. R. Co. v. Osborne*, Mr. Justice Brewer delivering the opinion of the Court. 10 U. S. App. 430, 52 Fed. Rep. 912, 4 Inters. Com. Rep. 257.

The instances in which it is contended in the opinion in this case the right claimed by the defendant might lead to abuses are extreme and not of probable occurrence. In any event, the Commission, under the rule that the route shall be "*reasonable*" and the through rate "*in the interest of the public*," would have the power to prevent or correct such abuses. On the other hand, the injurious consequences of a denial of the right, which find illustration in this case will be remediless.

Being impressed with the soundness of these views, I am con-

strained to dissent from the conclusion reached in the opinion in this case, that the defendant should be required to "desist from publishing or applying through rates to points on complainant's lines which are less than the sum of their respective locals," and to hold that the defendant may make and publish through rates to such points on complainant's lines, made by combining rates on its own line, less than its regular locals, with the legally established locals of the complainant, *provided* such rates on its own line are duly filed and published and are in themselves just and reasonable and not unjustly discriminating against local shippers.

W. L. FEWELL**v.**

RICHMOND & DANVILLE RAILROAD COMPANY (operating the Georgia Pacific Railway) and Samuel Spencer, F. W. Huidekoper, and Reuben Foster, Receivers thereof; Alabama Great Southern Railroad Company; Alabama & Vicksburg Railway Company; Mobile & Ohio Railroad Company; Georgia Pacific Railway Company and Samuel Spencer, F. W. Huidekoper, and Reuben Foster, Receivers thereof; The Southern Railway Company.

(No. 376.)

IN THE MATTER OF RATES CHARGED BY THE ALABAMA GREAT SOUTHERN RAILROAD COMPANY and the Alabama & Vicksburg Railway Company for the transportation of Coal from points in the State of Alabama to points in the State of Mississippi.

(No. 427.)

Decided August 20, 1897.

1. Defendants and other carriers, all subject to the Act to Regulate Commerce, are engaged in the interstate transportation of coal, wholly by railroad, from various mines in Alabama and other States to Jackson, Miss., under agreed rates which are less for each line than is charged on coal for shorter distances over the same line in the same direction, the shorter being included within the longer distance. *Held*, That the transportation by defendants of coal in carloads from such mines to Jackson and shorter-distance localities is performed "under substantially similar circumstances and conditions," within the meaning of the fourth section of the statute.
2. Coal transported from Corona, Birmingham or Blocton, Ala., to Vicksburg, Miss., must go by railroad, and the competition of such coal and coal from other Alabama mines in the Vicksburg market is with coal brought over long distances down the Ohio and Mississippi Rivers from Pittsburg, Pa., and other points in that mining district. *Held*, That this

is not competition between rail and water lines for transportation from a particular locality, but the competition of markets or mines for the supply of coal at Vicksburg, the force and effect of which is determined by commercial considerations peculiar to the business of shippers and wholly disconnected from the circumstances and conditions under which transportation is conducted.

3. Section 4 of the Act applies when the traffic is "over the same line" and "in the same direction," and to "transportation under substantially similar circumstances and conditions," and "the shorter" must be included within "the longer" distance; and any injustice or undue hardship which may result to carriers from compliance with the statute is removable by the Commission upon application by such carriers under the procedure authorized by the proviso clause of that section.

W. L. Fewell, for complainant.

Edward Colston, for Alabama Great Southern Railroad Company.

W. A. Henderson, for Southern Railway Company.

W. L. Nugent, for Alabama & Vicksburg R. Co.

S. M. Roane, for Receivers of Georgia Pacific R. Co.

A. J. Russell, for Mobile & Ohio R. Co.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, Commissioner :

These proceedings relate to rates on coal in carloads from Alabama mines to points on the Alabama & Vicksburg Railway west of Meridian, Miss., including Vicksburg, Miss. The complaint in No. 376, the case first above entitled (hereinafter referred to as the "Fewell case"), was filed February 15, 1894, heard in April of that year, and the filing of briefs was completed on August 20, 1894. Upon such submission of the case the Commission undertook to prepare its report, but it appeared that on one of the routes necessarily involved the charges were combinations of the local rate from Corona, Ala., to Birmingham, Ala., with the rates from Birmingham to said Alabama & Vicksburg points; that such combination rates were so much higher than those in force over other routes that no coal was ordinarily shipped and carried through from Corona *via* Birmingham to such Alabama & Vicksburg stations, but some coal had, nevertheless, been carried over that route for complainant to three local stations on the Alabama & Vicksburg Railway; that under the complaint the charges on coal so carried for complainant were drawn in comparison with

possible combination rates over such route to longer-distance points on that railway; and that the higher combination rates for shorter than for longer distances by this route from Corona were caused by rates in force from Birmingham which had not been distinctly complained of, and which had received but little attention at the hearing. It was thus made manifest that while the evidence was perhaps sufficient to enable the Commission to find the material facts and state its conclusions as to most of the various routes from Corona to Alabama & Vicksburg stations, the testimony was too meager to be regarded as a basis for determination in respect of rates on the route over which the complainant's coal had actually been shipped; and it was also apparent that the complaint had not been drawn with knowledge that the rates by such route were combination rates and that the separately established rates from Birmingham would necessarily be the subject of inquiry. The Commission thereupon, by order of August 3, 1895, instituted an investigation, on its own motion, embracing therein the said rates from Birmingham, and also rates from Blocton, Ala., another coal mining point reached by a short branch of the Alabama Great Southern Railroad, and which had been the subject of some testimony at the hearing in the Fewell case. This proceeding is No. 427, the second above entitled case, and is hereinafter referred to as the "Birmingham case." No hearing was had in this matter until April 14, 1896, chiefly because of the pendency of a case in the Supreme Court of the United States which, it was supposed, would result in a full construction by that court of the meaning of the rule and proviso in section 4 of the statute. That case (*Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Com.* ("Social Circle Case,") 162 U.S. 197, 40 L. ed. 939), having been decided by the Supreme Court without the definite construction expected, although the decision rendered tends, as is believed, to support the view of the fourth section which has been held by the Commission, and the determination of another long and short haul case, since brought to that court, having been deferred until the next term, it appears to the Commission that the disposition of these proceedings should not be longer delayed. As the two cases under consideration are closely related, one growing out of the other, and involving the legality of coal rates to the same destinations from the same general mining region in Alabama, it seems

suitable that they should be considered and disposed of in one report.

The complaint in the Fewell case alleges that defendants' rates on coal in carload lots from mines at Corona, Ala., to Pelahatchie, Bolton, Edwards, and other points in Mississippi on the Alabama & Vicksburg Railway, whether carried over a route from Corona *via* West Point, Miss., or over a route *via* Birmingham, Ala., are greater for shorter distances to Pelahatchie and said other points in Mississippi, including Jackson in that State, than for the longer distance over the same line in the same direction to Vicksburg, Miss.; and that such rates from Corona to Pelahatchie and other points on the Alabama & Vicksburg road east of Jackson are also greater for the shorter distance thereto than for the longer distance over the same line in the same direction to Jackson, Miss.; and therefore that said rates are in violation of section 4 of the Act to Regulate Commerce. The complaint also specifies the shipment to complainant of five cars of coal in October and November, 1893, from Corona, Ala., to Bolton, Edwards, and Pelahatchie, over the route *via* Birmingham, Ala., on which transportation charges at the rate of \$2.50 per ton, or \$252.50 for the total shipment of 101 tons, were demanded and collected of complainant by certain of the defendant roads, while the same roads had in force at that time a rate on coal from Corona, Ala., for the longer distance to Vicksburg, Miss., of only \$1.55; and reparation is accordingly demanded to the extent of the difference between the higher rate charged to Bolton, Edwards, and Pelahatchie than the lower rate contemporaneously in force to Vicksburg, amounting to \$95.95 on the 101 tons so shipped.

The defendants, the Richmond & Danville Railroad Company and its receivers, were not, as alleged in the Fewell case, operating the Georgia Pacific Railway at the date of the complaint or at the time of complainant's shipments, and they have not since been in possession or control thereof. As to those defendants, the complaint should be dismissed. The Georgia Pacific Railway Company and its receivers were made parties defendant in that proceeding by order of the Commission entered March 9, 1894. Since the hearing of the Fewell case, the Georgia Pacific Railway has become part of the system controlled and operated by the Southern Railway Company.

Under the order of the Commission instituting the Birmingham case, the Alabama Great Southern Railroad Company and the Alabama & Vicksburg Railway Company were made respondents and required to answer alleged violations of sections 1, 2, 3 and 4 of the Act to Regulate Commerce in respect of rates on coal from Birmingham and Blocton, Ala., to Woodlawn, Pelahatchie and other Mississippi points as related to such rates for the longer distance to Jackson and Vicksburg, Miss., and as to coal rates from Birmingham and Blocton to Mt. Albon, Edwards, Bolton, Jackson, and other Mississippi points as related to such rates to Vicksburg. The rates per ton set out in the order from Birmingham were \$1.55 to Vicksburg, \$1.95 to Jackson, and \$2.05 to all other points on the Alabama & Vicksburg Railway west of Meridian; from Blocton, \$1.55 to Vicksburg, \$1.80 to Jackson, and \$1.90 to all of said other Alabama and Vicksburg points. It was also alleged in the order that these two companies had in effect a rate of \$1.16 per ton on coal carried from Blocton to Vicksburg for the Yazoo & Mississippi Valley Railway Company.

The respondents in the Birmingham case denied the violations of law charged in the order, and also denied the existence of a lower rate of \$1.16 to Vicksburg by the Yazoo & Mississippi Valley road. In the Fewell case the answers of the Georgia Pacific Railway Company and its receivers and the Alabama Great Southern Railroad Company denied that the rates from Corona *via* Birmingham to either Jackson or Vicksburg were as stated in the complaint, and the Alabama Great Southern also averred that it had not been engaged in any manner in the carriage of coal from Corona to Jackson and Vicksburg under the rates alleged in the complaint, and that coal from Corona to said points did not under said rates pass over its line of railroad, which extends from Birmingham, Ala., to Meridian, Miss., nor over any part of it, and that it received no part of the money paid for such carriage and was in no wise concerned therein. The answers in the Birmingham case, and, with the exception above noted, the answers in the Fewell case, admit the alleged greater charges for shorter than for longer distances; but the carriers claimed that these disparities were caused by competitive conditions at Jackson and Vicksburg, the longer-distance points, which did not exist at the short-

er-distance localities, and that therefore the transportation for the longer and shorter distances involved was not "under similar circumstances and conditions" so as to bring the rates within the rule of the fourth section. Notwithstanding the allegations contained in paragraphs one, two and three of the order instituting the Birmingham case, the rates as applied on longer and shorter hauls constituted the main subject of inquiry at the hearing, as they did in the Fewell case, and the facts set forth in this report are stated with reference to alleged violations of the fourth section by the carriers under investigation.

FACTS.

1. The complainant in the Fewell case is engaged at Meridian, Miss., in selling coal in that city and at various points on the Alabama & Vicksburg Railway, and in the shipment of coal from mines in Alabama for sale as aforesaid.

2. Corona is a station on the Georgia Pacific Railway, in the State of Alabama, 55 miles west of Birmingham, Ala., 68 miles east of Columbus, Miss., 86 miles east of West Point, Miss., 153 miles east of Winona, Miss., and 224 miles east of Elizabeth Miss.; and all these points are reached by the Georgia Pacific Railway, which extends almost directly west from Atlanta, Ga., through Birmingham and Corona to Greenville, Miss. Coal shipped from Corona and destined to points on the Alabama & Vicksburg Railway may be forwarded by the initial carrier, the Georgia Pacific Railway (now Southern Railway), over various routes of which that road forms a part, and through either Columbus, West Point, Winona, Elizabeth or Birmingham. These various routes from Corona are as follows:

a. Georgia Pacific to Columbus, 68 miles; Mobile & Ohio to Meridian, 98 miles; total distance, 166 miles; Alabama & Vicksburg to destination. Total distance to Jackson, 262 miles; to Vicksburg, 306 miles.

b. Georgia Pacific to West Point, 86 miles; Mobile & Ohio to Meridian, $97\frac{1}{2}$ miles; total distance, $183\frac{1}{2}$ miles; Alabama & Vicksburg to destination. Total distance to Jackson, $279\frac{1}{2}$ miles; to Vicksburg, $323\frac{1}{2}$ miles.

c. Georgia Pacific to West Point, 86 miles; Illinois Central to Durant and Jackson, $151\frac{1}{2}$ miles; total distance, $237\frac{1}{2}$ miles;

Alabama & Vicksburg to destination. Total distance to Vicksburg, $281\frac{1}{2}$ miles.

d. Georgia Pacific to Winona, 153 miles; Illinois Central to Jackson, $88\frac{1}{2}$ miles; total distance, $241\frac{1}{2}$ miles; Alabama & Vicksburg to destination. Total distance to Vicksburg, $285\frac{1}{2}$ miles.

e. Georgia Pacific to Elizabeth, 224 miles; Yazoo & Miss. Valley to Vicksburg. Total distance, 306 miles.

f. Georgia Pacific to Birmingham, 55 miles; Alabama Great Southern to Meridian, 153 miles; total distance to Meridian, 208 miles; Alabama & Vicksburg to destination. Total distance to Jackson, 304 miles; to Vicksburg, 348 miles.

The routes to Jackson and Vicksburg *via* West Point or Winona and the Georgia Pacific and Illinois Central roads are somewhat shorter than the others, but the short line to Meridian is *via* Columbus and the Georgia Pacific and Mobile & Ohio lines. It is possible to send coal from Corona by the Georgia Pacific to the Mississippi River, distance about 240 miles, transfer it to barges, and float it down to Vicksburg, but it does not appear that coal goes from Corona to Vicksburg in that way.

While it is possible to route Birmingham coal to Alabama and Vicksburg points *via* the Georgia Pacific and the various above-mentioned routes ("a" to "e" inclusive), the distance is much shorter by the Alabama Great Southern to Meridian. Thus, the distances Birmingham to Jackson and Vicksburg by this route are 249 and 293 miles, respectively, while by the Georgia Pacific, and the shortest of the other routes (route "c"), the distances from Birmingham are $292\frac{1}{2}$ miles to Jackson and $336\frac{1}{2}$ miles to Vicksburg.

Blocton is on a branch of the Alabama Great Southern, about 8 miles from Woodstock, Ala., on the main line, and is 132 miles from Meridian, 228 miles from Jackson, and 272 miles from Vicksburg. The route for Blocton coal to Jackson, Vicksburg, and other points on the Alabama & Vicksburg is *via* the Alabama Great Southern to Meridian and thence by the Alabama & Vicksburg.

The routes under consideration are, from Corona, *via* the Georgia Pacific, Mobile & Ohio and Alabama & Vicksburg, routes "a" and "b," and *via* the Georgia Pacific, Alabama

Great Southern and Alabama & Vicksburg, route "f;" from Birmingham and Blocton, *via* the Alabama Great Southern and Alabama & Vicksburg.

3. The rates from Corona *via* the Georgia Pacific, Alabama Great Southern, and Alabama & Vicksburg, route "f," were not, at the time of complainant Fewell's shipments in October and November, 1893, to Pelahatchie, Bolton and Edwards, \$1.80 per ton to Jackson and \$1.55 to Vicksburg, as stated in the complaint. The charges then applicable by this route from Corona were combination rates, made up of 45 cents, the Georgia Pacific local to Birmingham, \$1.95 Birmingham to Jackson, and \$1.55 Birmingham to Vicksburg, making total rates from Corona of \$2.40 to Jackson and \$2 per ton to Vicksburg. In like manner, the rates to Pelahatchie, Bolton and Edwards were made by combining the Georgia Pacific local of 45 cents to Birmingham with a rate of \$2.05 in force on shipments from Birmingham to those points, amounting to a total rate of \$2.50, as alleged in the complaint. Under these rates, complainant's claim for reparation on 101 tons of coal, five carloads, which he is found to have had shipped to Pelahatchie, Bolton and Edwards in October and November, 1893, is reduced to 50 cents per ton, or \$50.50, based on comparison with the \$2 charge applicable to shipments from Corona through those points to Vicksburg. But at the time such shipments were made, coal from Corona to Jackson or Vicksburg was not the subject of transportation *via* Birmingham at the higher combination rates above mentioned, nor was coal from Corona to Pelahatchie, Bolton or Edwards ordinarily transported by that route. These shipments for complainant were carried *via* Birmingham in compliance with his express direction. The combination rate of \$2.50 per ton for Pelahatchie, Bolton or Edwards *via* Birmingham was the same as the rate in force over the somewhat shorter line of the Georgia Pacific, Mobile & Ohio and Alabama & Vicksburg *via* West Point or Columbus, but the Georgia Pacific obtained about 70 cents out of that rate for its haul of 68 miles to Columbus, as against 45 cents per ton for a haul of 55 miles to Birmingham. Complainant had no coal shipped from Corona *via* Birmingham to either Jackson or Vicksburg, and there was no proof of any other shipments from Corona by that route to Alabama and Vicksburg points than those which were carried for complainant at his own request.

4. The conditions in regard to routing coal from Corona *via* Birmingham to Alabama and Vicksburg points have apparently altered since the complaint was filed and hearing had in the Fewell case. The Alabama Great Southern, while still separately operated under that name, is managed by the Southern Railway, the General Freight Agent of which testified that "the management of the Southern Railway manages the Alabama Great Southern Railroad separately." The Southern Railway Company also operates the Georgia Pacific Railway. Rates from Corona, Birmingham and Blocton to Alabama and Vicksburg points are now all shown upon a tariff and supplement issued by the Southern Railway Co., Alabama Great Southern R. R. Co., and Knoxville, Cumberland Gap & Louisville Ry. Co. This schedule is entitled Coal Tariff No. 1 (I. C. C. No. 1600), and appears to set forth coal rates from the various coal mining stations on the Southern Railway system to points generally in the Southern States. The Alabama & Vicksburg Railway Company is a party to this tariff. The Mobile & Ohio is also therein stated to be a party, but that company has filed a separate tariff, "I. S. 1556" (I. C. C. 523), and Supplement No. 1 thereto, with a statement that they are "reissues" of rates named in "So. Ry. Coal Tariff 1600, and are the rates in which the M. & O. will participate." On the carriage of coal to Alabama and Vicksburg points from Corona these Mobile & Ohio rates are the same as those mentioned in Southern Railway Coal Tariff No. 1. The Illinois Central Railroad Company has also concurred in the rates stated in said Coal Tariff No. 1, but the Yazoo & Mississippi Valley R. R. Co., named in said tariff as a party thereto, and which connects with the Georgia Pacific at Elizabeth, Miss. (route "e"), has, by notice filed with the Commission, declined to concur in the rates set out in that tariff.

5. Coal rates from Corona to Alabama and Vicksburg points by the Georgia Pacific, Mobile & Ohio, and Alabama & Vicksburg roads (routes "a" and "b"), were at the date of complaint, and when the Fewell case was submitted, including the rates to Meridian by the two roads first mentioned, as set forth in the following table:

From	Distance from Corona.	Distance from Meridian.	Lump Coal.	Run of Mines Coal.
Corona, Ala., To	Miles.	Miles.	Rates in cts. per ton	Rates in cts. per ton
Meridian, Miss. -----	166		125	115
Lost Gap, " -----	172	6	210	200
Graham, " -----	177	11	215	205
Chunky, " -----	183	17	220	210
Hickory, " -----	189	23	225	215
Blalack, " -----	193	27	230	220
Chambers, " -----	195	29	230	220
Newton, " -----	197	31	235	225
Sand Pit, " -----	198	32	235	225
Lawrence, " -----	201	35	235	225
East Mill, " -----	203	37	240	230
Lake, " -----	207	41	245	235
Forest, " -----	215	49	250	240
Raworth, " -----	221	55	"	"
Gravel Pit Junction, Miss. -----	225	59	"	"
Morton, " -----	226	60	"	"
Clarksburgh, " -----	231	65	"	"
Pelabatchie, " -----	235	69	"	"
Rankin, " -----	242	76	"	"
Brandon, " -----	247	81	"	"
Rice Hill, " -----	250	84	"	"
Green's, " -----	251	85	"	"
Howell's, " -----	254	88	"	"
Pearson's, " -----	257	91	"	"
Woodlawn, " -----	258	92	"	"
Jackson, " -----	262	96	180	180
Clinton, " -----	271	105	250	240
Perch Place, " -----	275	109	"	"
Bolton, " -----	279	113	"	"
Donore, " -----	283	117	"	"
Edward's, " -----	288	122	"	"
Griswold's, " -----	289	123	"	"
Euclid, " -----	290	124	"	"
Smith's, " -----	292	126	245	240
Bovina, " -----	296	130	240	240
Newman's, " -----	298	132	"	"
Mt. Albon, " -----	299	133	"	"
Vicksburg, " -----	306	140	155	155

The rates were not only lower to Jackson and Vicksburg than to any other point except Meridian, the eastern terminus of the Alabama & Vicksburg road, but they were lower to Vicksburg than for the shorter distance to Jackson, and lower to some small stations near Vicksburg than to a number of shorter distance

stations east and west of Jackson. How the \$1.55 rate to Vicksburg was divided between the carriers is not shown. The Jackson rate of \$1.80 was divided, 70 cents to the Georgia Pacific, 55 cents to the Mobile & Ohio, and 55 cents to the Alabama & Vicksburg. On all lump coal from Corona to points served by the Alabama & Vicksburg, except Vicksburg, the Georgia Pacific and Mobile & Ohio received their established rate to Meridian of \$1.25. On Corona coal shipped to Jackson the Alabama & Vicksburg obtained 55 cents for carrying from Meridian, but when shipments were destined to other points east of Vicksburg that railway secured its full local rate from Meridian; and to Pelahatchie, 69 miles from Meridian, this was \$1.25 per ton, as much as the other two carriers received for the haul of 166 miles to Meridian. These local rates of the Alabama & Vicksburg were stated in a distance tariff of that railway, bearing a notation to the effect that the rates were authorized by the "Mississippi State Commissioners"; and under such tariff this company charged 85 cents a ton for 5 miles or over and less than 15; 90 cents for 15 miles but less than 20, and for each additional 5 miles the rate was increased 5 cents up to \$1.25, which was applied on all coal carried 50 miles or more. The rates from Corona to all stations except Jackson and Vicksburg were therefore combinations of the rate to Meridian, with the Alabama & Vicksburg local rate therefrom, except as to a few stations near Vicksburg, which apparently took the local added to the Vicksburg rate. During the same period the rates from Birmingham and Blocton *via* the Alabama Great Southern and Alabama & Vicksburg were as follows:

	Lump.	Run of mines.
Birmingham to Meridian.....	\$1.40	\$1.15
Blocton to Meridian	1.15	1.15
Birmingham and Blocton to Vicksburg	1.55	1.55
Birmingham to Jackson	1.95	1.95
Blocton to Jackson.....	1.80	1.80
Birmingham to all other points on the Alabama & Vicksburg road.....	2.05	2.05
Blocton to all other points on the Alabama & Vicksburg road.....	1.90	1.90

All of these rates were joint rates and much less than the sums of locals based on Meridian, Jackson or Vicksburg.

6. By Southern Railway Coal Tariff No. 1 coal mines served by that railway system are divided into ten groups. Corona, Ala., is in group 4, with America, Coal Valley, Deer Creek, Lockhart's, Mountain Top, Oakman, Parrish, Patton, and Smith's, all in Alabama. Birmingham, North Birmingham, East Birmingham, and Bessemer, Ala., are in group 1. Group 2 rates only apply from Blocton, Ala. Under this tariff but one rate is in effect from groups 1, 2, and 4—from Corona, Blocton, or Birmingham—to points reached by the Alabama & Vicksburg, except Jackson and Vicksburg. This rate is \$2.05 per ton, and applies to Lost Gap, 6 miles west of Meridian, and to Newman's, 8 miles east of Vicksburg, and to all stations, except Jackson, between Lost Gap and Newman's, including Pelahatchie, Bolton, and Edwards. Prior to August 10, 1897, the rates to Jackson, Miss., were less on steam than on coal used for domestic purposes. From each of these groups—1, 2, and 4—the rate on steam coal was \$1.55 per ton and on domestic coal the rates to Jackson were \$1.90 from group 1—Birmingham, \$1.75 from group 2—Blocton, \$1.80 from group 4—Corona. The rate from each of these groups to Vicksburg (A. & V. western terminus) has been and is \$1.55 per ton on both domestic and steam coal, and to Meridian (A. & V. eastern terminus) the rate is \$1.15 on coal used for either purpose.

Up to August 10, coal rates from Corona, Birmingham, and Blocton to Alabama & Vicksburg points were therefore—

To Meridian (via A. G. S. or M. & O.)	\$1.15 per ton
" all Ala. & Vicks. stations, except Jackson and Vicksburg.....	2.05 " "
" Jackson, steam	1.55 " "
" Jackson, domestic, from Blocton.....	1.75 " "
" " " " Corona.....	1.80 " "
" " " " Birmingham.....	1.90 " "
" Vicksburg.....	1.55 " "

By amendment of Southern Railway Coal Tariff No. 1 (I. C. C. C. No. 1600) effective August 10, 1897, the Vicksburg rate of \$1.55 was put in force to Jackson on all kinds of coal shipped from either Corona, Birmingham or Blocton. Under present rates, the charges on coal to local stations on the Alabama & Vicksburg are, per ton, 50 cents higher than for the haul through those points to Vicksburg or Jackson. These present rates are from

35 to 45 cents less than the rates formerly in effect from Corona to many local points on the Alabama & Vicksburg Railway, but they are 15 cents higher than those which were in force from Blocton, and they are the same as the rates stated in the fourth finding as formerly charged from Birmingham. The present rates to these local stations, as well as those to Jackson or Vicksburg, whether from Corona, Birmingham, or Blocton, are agreed joint rates and less than the sum of rates to and from Meridian, Jackson, or Vicksburg. The rates on steam coal applied only on nut, slack, pea, or run of mines coal.

7. The Alabama & Vicksburg, connecting Meridian on the east with Vicksburg on the west, passes through a somewhat sparsely settled section of country. Jackson, the principal town on this line between Meridian and Vicksburg, had a population of 5,920 in 1890. The same census gave Vicksburg 13,373 and Meridian 10,624 inhabitants. The testimony shows that most of the places along this railway are small hamlets having a population of less than 50 persons, except Newton 500; Lawrence 75; Lake 190; Forest 547; Morton 300; Pelahatchie 139; Brandon 835; and Clinton 330. But it also appears from such census that Mississippi is among those States in which the population is mostly rural. It has only three cities with over 8,000 inhabitants—Natchez, Meridian and Vicksburg—and the proportion of urban population in 1890 was only 2.64 per cent of the total; and such percentage of city inhabitants is less than is given for any other State. Nevertheless, its total population of 1,289,600 entitled Mississippi to the twenty-first place in a census table showing the "relative rank and population of the states and territories." There are few, if any, manufacturing enterprises carried on at Alabama and Vicksburg points other than Meridian, Vicksburg and Jackson, and only in those cities is coal used to any extent for steam purposes along the Alabama & Vicksburg road. The section penetrated by that railway is plentifully supplied with timber growth, and wood is largely used for fuel.

8. The Georgia Pacific (Southern Railway Company), is the only carrier of coal from Corona, Ala. The Alabama Great Southern Railway Company, also under the controlling management of the Southern Railway Company, operates the only road from Blocton, and this is also the short line from Birmingham or

Blocton for coal destined to Meridian or through Meridian to points generally on the Alabama & Vicksburg Railway. The Illinois Central carries coal to Jackson from various mines other than Corona or Birmingham, and the Kansas City, Memphis & Birmingham Railroad, may, with the Illinois Central, transport coal from or near Birmingham and intermediate mines on that line to Jackson. Besides Corona, Birmingham and Blocton, coal comes to Jackson and Vicksburg from mines in Alabama, Tennessee, Kentucky and Illinois, but only by the delivering roads shown in this case. There are shipments of northern coal down the Mississippi River to Vicksburg, but Corona, Birmingham and Blocton are among the nearest shipping stations for coal to Jackson or Vicksburg. The average load of coal per car from these Alabama mines is about 20 tons. Domestic coal sold at Blocton or Birmingham mines for about \$1.75 to \$2.00 per ton at the time of the hearing in the Birmingham case. On board the cars at Jackson, the coal was worth from \$3.65 to \$3.90 per ton. The ordinary selling price of domestic coal at Vicksburg during the winter of 1895-6 was \$4.40 per ton. This must include the Vicksburg dealer's profit, for with the price at the mines the same, and a lower rate to Vicksburg, the selling price aboard cars at Vicksburg should be less than at Jackson. The rate to Vicksburg added to \$2.00, price at the mine, gives a cost of \$3.55 at Vicksburg. In the Birmingham case, respondents' witness, Smith, estimated that the Birmingham and Blocton mines furnished 60 per cent of the coal used at Jackson during the preceding season. This witness also testified that coal coming down the river to Vicksburg had not been to his knowledge reshipped to Jackson during two or three years, and that "the interest of the Alabama & Vicksburg road was more largely in connection with rail lines;" and again, this witness said, that "the practicability of running Ohio River coal *via* Vicksburg to Jackson would depend very largely on the price of coal at Vicksburg and at Blocton." He further stated that in his opinion the application of the \$2.05 local point rate to Jackson from Birmingham or Blocton would not result in coal going to Jackson by way of Vicksburg. Under the distance tariff of the Alabama & Vicksburg road, the rate on a ton of coal from Vicksburg to Jackson would be \$1.25. Water-borne coal to Vicksburg is not shown to have forced the

present rates from Alabama mines to Jackson, and it has been permitted to have no effect whatever in the way of reducing railroad rates to any point between Jackson and Vicksburg.

The competition at Jackson is confined to that of rail carriers from the various mines. Prior to August 19, 1897, the rate in force on coal from Beaver Dam and other Kentucky mine stations on the Chesapeake & Ohio Southwestern Railway (controlled by the Illinois Central) to Jackson, Miss., *via* the Illinois Central Railroad, distant from Beaver Dam about 487 miles, was \$1.80 on domestic coal. On that date this rate was reduced to \$1.55 per ton. Rates from those mines to points on the Illinois Central, less distant than Jackson, Miss., are on domestic coal \$2.20 to Madison, Canton and Vaughn's. Madison is about 12 miles and Vaughn's is about 37 miles north of Jackson. The rate from those Kentucky mines to Grand Junction, on the Illinois Central, main line, and only 276 miles from Beaver Dam, is \$2 per ton, or 45 cents more than the rate to Jackson, 487 miles. From Carbon Hill and Horse Creek, mining stations in Alabama near Birmingham, and on the Kansas City, Memphis & Birmingham Railroad, the rates on coal to Jackson, made by that road in connection with the Illinois Central, were, prior to August 3, 1897, \$1.90 from Horse Creek and \$1.80 from Carbon Hill. Since that date the \$1.55 rate has been in effect from these mines to Jackson. The distances *via* Aberdeen, Miss., and the Illinois Central from these mines to Jackson are 245 miles from Carbon Hill and 277 miles from Horse Creek. To Madison, Canton and Vaughn's, shorter-distance points near Jackson, Miss., as above shown, the rates over this line from such Kansas City, Memphis & Birmingham mines, are \$2.30 per ton from Horse Creek and \$2.20 per ton from Carbon Hill. The foregoing rates to points reached by the Illinois Central are taken from tariffs on file with the Commission. Competing lines carrying coal from different mines to Jackson, including the defendants, make the same rate, \$1.55 per ton, to that point, but each of the lines charges considerably higher rates per ton to shorter-distance destinations through which coal is carried from the same mine to Jackson, the longer-distance point. The rates to Jackson from the various Alabama mines are agreed upon by the different lines to Jackson, and the railroad carriers to Vicksburg from these mines all charge the same rate.

9. Coal is floated down the Ohio and Mississippi Rivers in barges and in coal boats. This coal comes mostly from the Pittsburgh, Pa., district. The barge is a vessel of considerable value, and is towed back up the rivers for reloading. The boat is a large "square box" or float, costing from \$700 to \$900, and is generally sold for a nominal price at the unloading point. One tow boat will bring down a number of these floats carrying altogether several million bushels of coal. It takes about 27 bushels to equal a ton of coal. The time required for the trip from Pittsburgh to Vicksburg is testified to be about fifteen days, and the price per ton for the carriage on the river is stated to range from 90 cents to \$1.50 per ton. There is necessarily some additional cost involved in getting this coal from the northern mines to the river bank and loading in the floats. This coal sold at Vicksburg during a period of two years at from \$3.85 to \$4.40 per ton. How much of this northern coal is used at Vicksburg, or what is its value at the mines or the point of transshipment to the barge or boat, or on the docks at Vicksburg, does not appear. The movement of coal over the Alabama Great Southern to Vicksburg for a period of seven months was 271 cars, equal to about 5,420 tons. Pittsburgh coal is fully as good as most, if not all, of the Alabama coals. The Blocton coal is a better quality than either the Corona or Birmingham coal. In dry seasons the Ohio River is not navigable for barges or floats containing Pittsburgh or northern coal, but Vicksburg dealers in this river coal, like those at Cincinnati and Louisville, lay in a sufficient supply to carry them through the period of low water. The competition of this water-borne coal extends to New Orleans. The rate from Alabama mines to New Orleans for steam purposes was, at the time of the hearing in the Birmingham case in 1896, \$1.75, and \$1.60 when shipped for the use of the Southern Pacific Company, but such rates were not sufficient to hold the sale of coal to the Alabama mines, large quantities for the Southern Pacific Company and for sugar refiners, the Louisiana Electric Light Company, and for the government, having been contracted for with dealers in Pittsburgh coal. However this may be, the rail carriers from the Alabama mines to Vicksburg have been and are able to secure a good share of the business.

10. Using 300 miles as an average distance from Corona, Birmingham Inters. Com.

mingham and Blocton to Vicksburg, the rate of \$1.55 per ton yields the carriers a little over $\frac{1}{2}$ cent per ton per mile. The general freight agent of the Alabama Great Southern testified in the Birmingham case that $\frac{1}{2}$ cent per ton per mile is, as a rule, "considered a remunerative revenue on coal by the average railroad." A charge of \$1.55 to Pelahatchie amounts to over $6\frac{1}{2}$ mills per ton per mile for 235 miles from Corona, to nearly 7 mills per ton per mile for 222 miles from Birmingham, and to over $7\frac{1}{2}$ mills per ton per mile for 201 miles from Blocton. The present charge of \$2.05 per ton to Pelahatchie yields a revenue per ton per mile at the distances stated of over 9 mills from Corona and Birmingham, and more than 1 cent from Blocton.

11. The circumstances and conditions under which the defendants transport coal over these routes from Corona, Birmingham, and Blocton are substantially similar to the circumstances and conditions under which they transport coal from the same points of origin to intermediate shorter-distance destinations on the respective lines.

CONCLUSIONS.

The defense in each of these cases rests solely upon allegations of competition by other carriers engaged in the transportation of coal to Jackson and Vicksburg from mines other than those at Corona or Birmingham and Blocton. Coal from Birmingham and Blocton was claimed in the Fewell case to compete with coal from Corona; and in the Birmingham case coal from Georgia Pacific mines, including Corona, was alleged to compete with Birmingham and Blocton mines. While coals from these three sources are in competition with each other for sale at Jackson and Vicksburg *in the trade sense*, it appears from the findings that the transportation rates from those mines to Alabama & Vicksburg stations, including Jackson and Vicksburg, are practically under the control of one railway system (The Southern) as the initial carrier, and are established and published in a single schedule of charges. The Kansas City, Memphis & Birmingham road, which reaches Birmingham, may constitute an exception to this statement, but if it does the testimony is that all these carriers from Alabama mines have agreed upon the rates to Jackson.

The competition of the Illinois Central and Kansas City, Mem-

phis & Birmingham for the transportation of coal to Jackson from mines reached by their different lines, is characterized by the same disregard of distance conditions that admittedly exists in the tariffs of the defendants in the cases under consideration. Less is charged on coal from Illinois Central and Kansas City, Memphis & Birmingham mines to Jackson than is exacted for coal transportation to intermediate (shorter-distance) points from the same mines, and over all lines the shorter-distance charges are much greater than the common rate in force to Jackson. The carriage of northern coals by barge or boat on the Ohio and Mississippi Rivers to Vicksburg is not shown to cause the low rate to Jackson from the various mines; and if it did, the same influence would necessarily cause low rates from such mines to all points between Jackson and Vicksburg.

We have, then, in these cases, a striking illustration of the results produced by competing carriers subject to the regulating statute when they follow a practice of permitting competition with each other to cause low rates at a given point, while they severally charge higher rates on the same traffic to intermediate stations. One carrier makes a low rate to a competitive point to get business, the other meets or goes below such rate, and they finally settle upon a like charge which is then continued in force for an indefinite period. They nevertheless continue to regard such rate as competitive and necessarily lower than rates to intermediate local or non-competitive stations on their several lines because of assumed dissimilar conditions at the competing points; yet all of the carriers are alike subject to the statutory rule forbidding them to charge more for the shorter distance on transportation performed under *substantially* similar circumstances and conditions. No reason is shown in this case why the \$2.05 rate per ton to intermediate points on the Alabama & Vicksburg road could not be charged to Jackson by all the carriers to that point without loss of traffic, and if the present rate of \$1.55 to Jackson is still preferred or deemed necessary, it does not appear that defendants would lose any great amount of revenue by applying the Jackson rate on coal to intermediate points. Under the facts pertaining to coal transportation to Jackson and the shorter-distance localities, the defense amounts to a claim that the carriers to Jackson are entitled, under the fourth section, to

make the lower longer-distance rates to Jackson because of artificial conditions created by themselves. All of these carriers are subject to the law, all of them depart from the long and short haul rule of the law, and each defendant attempts to justify its departure by the similar act of the other carriers. If there were but one carrier to Jackson the long and short haul rule, it is practically admitted, would apply on coal to that city, but because there are different interstate rail lines over which coal is carried to Jackson it is contended, in substance, that each line is authorized to ignore that rule. So defined, as the facts fully warrant, defendants' position with reference to the Jackson rate is shown to be untenable, if not absurd.

Some stress was laid by defendants, particularly in the Birmingham case, upon the fact that the local or shorter-distance stations involved are mostly small hamlets, that the only towns of any size west of Meridian are Jackson and Vicksburg, and that the country through which the Alabama & Vicksburg road runs is well supplied with timber which is largely used for fuel. We are unable to see how those facts can create a substantial dissimilarity in the circumstances and conditions *under which* transportation is performed to the shorter and longer distance stations when, to reach the longer-distance points, the traffic must be carried through the less populous shorter-distance localities. Cheap coal benefits the consumer living in Pelahatchie as it does the consumer in Jackson, and the defendants' length of haul, and presumptively the cost of carrying coal in carload quantities, are less to Pelahatchie than to Jackson. That the carrier may prefer to carry traffic to destinations having larger consignments does not warrant it in making higher rates to a more favorably situated but less populous locality, and we are not convinced that the true interests of any carrier lie in the direction of making rates which tend to build up a few cities and retard or prevent the growth and prosperity of other stations on its line.

With regard to the situation at Vicksburg it appears that there is strong competition wholly by water in the carriage of Pittsburgh or Northern coal to Vicksburg, and that all of the defendants have established the same rate of \$1.55 from Alabama mines to Vicksburg on both domestic and steam coal. But it also appears that under such rates defendants carry a fair share of the

coal used at Vicksburg, and that the rate is considered remunerative for the service rendered. Besides, the water transportation which is relied upon to justify the lower rate from Alabama mines to Vicksburg is the bringing of coal down the Ohio and Mississippi Rivers from the far distant Pennsylvania coal regions. The facts as to the real force or effect of the competition of Northern coal brought to Vicksburg by water are absent from this record, and though the respondents in the Birmingham case were granted leave to take additional testimony with a view of supplying these facts they have not seen fit to do so. There is no water competition for the carriage of coal from either Birmingham, Blocton, or Corona, nor from any of the stations in groups 1, 2 and 4 in which under the present tariff of defendants those shipping points belong. One transportation line cannot be said to meet the competition of another transportation line for the carriage of traffic from any particular locality unless the latter line could and would perform the service alone if the former did not undertake it. *Board of Trade of Chattanooga v. East Tennessee, V. & G. R. Co.* 5 I. C. C. Rep. 546, 4 Inters. Com. Rep. 213. Water competition, to justify the greater charge for the shorter distance, must be competition in transportation to the longer-distance point as to freight which, if not carried to such longer-distance point by the defendant roads, could reach such destination by water transportation. *James & M. Buggy Co. v. Cincinnati, N. O. & T. P. R. Co.* 4 I. C. C. Rep. 744, 3 Inters. Com. Rep. 682; *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Com.* ("Social Circle Case,") 162 U. S. 197, 40 L. ed. 939. In these cases, the coal from Corona, Birmingham or Blocton must go by rail or not at all, and the competition of these and other Alabama mines—served only by railroad—for the sale of coal at Vicksburg is with mines in the Pittsburgh district. This is market competition, as to which the Commission said in *Georgia R. Com. v. Clyde S. S. Co.* 5 I. C. C. Rep. 324, 4 Inters. Com. Rep. 120, "to determine the force and effect of such market competition involves the consideration of commercial questions peculiar to the business of shippers, such as advantage of business location, comparative economy of production, comparative quality and market value of commodities, all of which are entirely disconnected from circumstances and conditions under

which transportation is conducted;" and it was held in that case that such competition does not create dissimilar circumstances and conditions under the fourth section. The Commission also held in the same decision that competition of carriers subject to regulation under the Act to Regulate Commerce does not create such substantial dissimilarity in circumstances and conditions under which transportation is performed as to justify such a carrier in making greater charges for the shorter than for the longer distance under the fourth section, without an order of relief granted by the Commission upon application and showing by the carrier as required in the proviso to that section. These rulings have been repeatedly affirmed by the Commission in subsequent decisions. *Board of Trade of Lynchburg v. Old Dominion S. S. Co.* 6 I. C. C. Rep. 632; *Re Alleged Violations of 4th Section by Atchison, T. & S. F. R. Co.* 7 I. C. C. Rep. 61; *Brewer & Hanleiter v. Louisville & N. R. Co.* 7 I. C. C. Rep. 224; and the United States Supreme Court in affirming the lawfulness of our order in the *Social Circle Case*, *supra*, had before it a state of facts showing the existence of market and carriers' competition at the longer-distance point fully as severe as has been shown in these cases to prevail at Vicksburg.

It is not to be assumed that conformity to the rule of the fourth section can or will be allowed to work any real injustice or undue hardship to these defendants or to other carriers engaged in interstate commerce. This might be the result in some cases, notwithstanding the express limitations in the statute that the traffic must be "over the same line" and "in the same direction," and the "transportation under substantially similar circumstances and conditions," and "the shorter" be "included within the longer distance," if no means were provided whereby a modification of the general rule could be obtained upon showing of such injustice or hardship. But the law furnishes a method by which carriers may secure needful relief from any unjust burdens which observance of this rule would impose, and the remedy so provided must be deemed adequate to their protection. These defendants, or either of them, may apply to the Commission at any time for a relieving order under the proviso clause of the fourth section, and upon such application may present all the considerations arising from the competition of carriers from other mines, together with

all other matters relating to obtainable rates on coal from Corona, Birmingham or Blocton, or to the circumstances and conditions under which coal is transported by them from these points to Jackson and Vicksburg, as well as to intermediate localities.

Upon consideration of all the facts and circumstances, we hold that the defendant carriers in these cases have failed to show justification for the higher coal rate to the shorter-distance stations on the Alabama & Vicksburg railway than rates from the same mines for the longer distances to Jackson and Vicksburg. Orders against the carriers will be entered accordingly.

We are not satisfied as to the propriety of ordering a refund to complainant Fewell of the difference between the \$2.50 rate charged to him on five carloads of coal carried at his express request from Corona over the possible, but then not used, route *via* Birmingham and the Alabama Great Southern road to Pelahatchie, Bolton and Edwards and the combination rate of \$2.00 to Vicksburg, the Vicksburg rate by the other routes then being \$1.55, and no instance of any shipment of coal from Corona *via* Birmingham to Vicksburg having been shown during the time covered by the Fewell complaint. Since the hearing of that case, and probably caused to some extent by the change in management of the Alabama Great Southern Road, rates over the route *via* Birmingham from Corona have been made the same as those in force over the various other lines from Corona, but, as stated, the Birmingham route appears to have been previously used for Corona coal only in the single instance of complainant's shipments. Moreover, the rates from Birmingham were investigated in a wholly distinct proceeding. Complainant's claim for reparation is denied.

The order to be entered in the Fewell case will be directed against the defendants therein, except the Richmond & Danville R. R. Co., and its receivers, and also against the Southern Railway, as successor of the Georgia Pacific Railway Company, and now operating that railway, with a provision permitting said Southern Railway Company to show cause for a modification or setting aside of the order within twenty days.

A. J. GUSTIN

v.

ILLINOIS CENTRAL RAILROAD COMPANY ET AL.

Decided October 19, 1897.

Freight rates from Memphis, New Orleans, Dallas and other southern and southwestern points to Kearney, Neb., made up of rates to and from Omaha, were alleged to be unreasonable, unjust, and unlawful, but no joint through rates were published or filed, the defendants either denied or did not admit that the shipment and carriage was continuous, and no proof was submitted by complainant showing that defendants make a through route in fact by their course of business. *Held*, That the Commission has no power to compel a through route, and, no issue of law or fact having been presented over which the Commission has jurisdiction, the complaint should be dismissed.

A. J. Gustin for complainant.

Edward Baxter and others for defendants.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

The rates attacked by this complaint are those from New Orleans and points in Louisiana, Dallas and points in Texas, Memphis and other points upon the Southern Mississippi and Little Rock and Arkansas points, to Kearney, Neb.

The complainant is a resident of Kearney, and makes this complaint in behalf of the business interests of that town. He alleges that the defendants are engaged in the continuous carriage of merchandise from the points above named to Kearney; that they publish through joint rates upon such traffic; that said rates are made by adding the joint rate to Omaha and other Missouri River points and the local rate from such points to Kearney; that this, while professedly a through rate, is not such in any proper sense, and that it discriminates against Kearney and the business interests of that locality.

He further alleges that the rates from these various points to Kearney are unreasonable.

The answers of the defendants may be divided into three general classes :

1. The railroads comprising the first group, of which the Alabama Great Southern may be taken as a type, deny that they receive upon their line freight from Kearney, or that they participate in any through traffic from the points named to Kearney, or that they have in force any joint rates upon such traffic.

2. Those comprising the second group, of which the Illinois Central may stand as an example, admit that they receive freight upon their respective lines destined to Kearney. They assert, however, that they have no joint published tariff to Kearney; that when a shipper presents freight for Kearney and asks the rate, they ascertain it by taking the joint rate to Omaha and adding to that the local rate from Omaha to Kearney, and they assert that this is done purely for the convenience of the shipper, and say that if the ascertaining and quoting of a through rate subjects them to any liability they will in the future quote only the joint rate to Omaha.

3. Kearney is reached by but two railroads, the Union Pacific and the Burlington & Missouri River Railroad in Nebraska. These two carriers assert that they receive freight destined for Kearney at Omaha and at other Missouri River points, and transport it to its destination upon the regular local rate, which is a fair and reasonable one.

The receivers of the Union Pacific deny that they have any joint through rate between points named in the complaint and Kearney. The Burlington & Missouri River apparently admits that it has in force such rates from certain eastern points to Kearney, but not from the points named in this complaint.

The Missouri, Kansas & Texas Railway Company answers that it does not publish through rates nor participate in through traffic between the other points named in the complaint and Kearney, but asserts that it does publish and maintain rates from Dallas and Texas points to Kearney, and that the rates to Kearney are exactly the same as the rates to Omaha; that the traffic in either case passes through Kansas City; that the distance from Kansas City to Omaha is 205 miles and to Kearney 334 miles, from which

it would appear that there is no unjust discrimination against Kearney in these rates.

The complainant in this case was also the complainant in two other cases, one against the Burlington & Missouri River Railroad in Nebraska and others, and the other against the Atchison, Topeka & Santa Fé Railway Company and others. In the former of these, rates from the West to Kearney, and in the latter, rates from the East to Kearney, were drawn in question. The three cases were heard together upon the understanding that whatever testimony was applicable to each should be considered in that case. This testimony raises distinct issues as to western rates and other issues as to eastern rates; but a careful examination of the evidence fails to disclose anything which can be said to raise any issue as to the rates complained of in this case.

The complainant testified generally that he believed in a postal freight rate. He also testified that the rates on cotton from southern points to Kearney were too high and that the rates from New Orleans to Kearney were $33\frac{1}{2}$ per cent too high. The reasons which he gave for the latter opinion were that lower rates had been made for the same service in the past; that the railroads operating between New Orleans and Kearney received more in the aggregate for the service rendered than is received in the aggregate by all the roads in the United States for a similar service, and that these rates were the result of agreement; no railroad rate which was not the result of open competition was as low as it ought to be. It did not appear how much lower these rates had been in the past, nor were any figures given showing the aggregate amounts received by carriers for transportation between New Orleans and Kearney as compared with other carriers. We should hardly feel warranted upon this testimony alone in finding these rates to be unreasonable.

The complainant introduced a table showing the rates from the points complained of to Omaha and Kearney respectively, with the comparative rate per ton per mile. From these statements it appeared that the rate per ton per mile from each of these given points to Omaha was considerably less than the rate per ton per mile from the same point to Kearney, although Kearney was the more distant and the traffic passed through Omaha *en route* to Kearney. It also fairly appeared from the testimony that this through rate was arrived at by adding together the joint rate to

Omaha and the local rate from Omaha to Kearney. The complainant insisted that this was not the proper way in which to determine the through rate, and that the rate thus arrived at was unjust to Kearney.

An examination of the rates filed by the various defendants with the Interstate Commerce Commission, which were made a part of the case, fails to show that any of the defendants maintain joint rates from the points complained of to Kearney. The rate from Omaha is fixed by the Railway Commission for the State of Nebraska. The situation, therefore, is this: Upon the testimony there are no joint rates by agreement from the points in question to Kearney. The defendants carry merchandise destined for Kearney to Omaha upon a joint rate. At Omaha it is taken by the Union Pacific or the Burlington & Missouri River Railroad, and transported to Kearney upon a local rate. The defendants do not in any case admit, and mostly deny, in their answers, that they have any arrangement with the roads running from Missouri River points to Kearney for a through and continuous shipment of this merchandise, and the testimony makes no reference whatever to this branch of the case. Nothing appears as to what the practice is as to through billing, through cars, the collection of freights, etc., which might show that the defendants had made joint lines in fact although there was no express agreement. It is not shown how the exchange of traffic is made at Omaha.

It is well settled that the Commission has no authority to order a through route or a through rate; that can only be by agreement of the carriers themselves.

The joint rate to Omaha was incidentally attacked in the complaint, but was not referred to in the testimony and cannot be said to be in issue. The rate from Omaha to Kearney is an intrastate rate over which we have no control. The rate really drawn in question is an alleged joint through rate made by the addition of these two rates. But, upon this case, there is no such rate. The defendants publish none, nor is it suggested that they agree upon any. It is not found that they make a through route in fact by their course of business. We have no power to compel one. The pleadings and evidence present no issue of law or fact over which the Commission has jurisdiction, and the complaint should be dismissed.

BOARD OF RAILROAD COMMISSIONERS OF THE
STATE OF KENTUCKY

v.

CINCINNATI, NEW ORLEANS & TEXAS PACIFIC
RAILWAY COMPANY; SOUTHERN RAILWAY COMPANY
ET AL.

Decided October 19, 1897.

1. Comparison of wheat rates charged by defendants from Nicholasville, Ky., with higher rates to the same points from St. Louis, Chicago or Milwaukee, much more distant points of shipment, or with a lower wheat rate in force from Louisville, Ky., to Newport News, Va., while tending to support complainant's case, not found to fairly establish the fact that the rates complained of were unreasonable or that they discriminated against Nicholasville.
2. Rates charged over the Cincinnati, New Orleans & Texas Pacific and Southern Railways for the transportation of wheat in carloads to Morristown and other points in Tennessee, found to have been higher for the shorter distance from Nicholasville, Ky., than for the longer distance over the same line, in the same direction, from Cincinnati, Ohio; but by a joint tariff recently filed the rates from Nicholasville were made not higher than those from Cincinnati. *Held*, That the former rates were in violation of the fourth section of the Act, but that the present charges are not, and that formal order in that respect should not now be issued.

John C. Wood, H. S. Irwin and S. D. Brown, for complainant.
Edward Baxter, for defendants.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

The Cincinnati, New Orleans & Texas Pacific Railway extends from Cincinnati, Ohio, to Chattanooga, Tenn. Nicholasville, Ky., is upon this line 94 miles south of Cincinnati, and Dayton, Tenn., is upon the same line 38 miles north of Chattanooga. This railroad is being operated by the defendant S. M. Felton, receiver. The Southern Railway connects with the Cincinnati, N. O. & T. P. Railway at Harriman Junction, Tenn., and Chatta-

nooga. The Western & Atlantic Railroad connects at Chattanooga with the Cincinnati, N. O. & T. P. Railway, and runs from there to Atlanta. It is operated by the defendant Nashville, Chattanooga & St. Louis Railway Co.

The rates on wheat from Nicholasville in carload lots are as follows:

To		
Dayton,	Tenn.	16 cents.
Chattanooga,	"	19 "
Morristown,	"	21 "
Cleveland,	"	19 "
Sweetwater,	"	19 "
Lenoir,	"	19 "
Mascot,	"	21 "
Afton,	"	21 "
Johnson City,	"	21 "
Adairsville, Ga.		22 "
Acworth,	"	22 "

The rate to Dayton and Chattanooga is a local one over the Cincinnati, N. O. & T. P. Railway. The points in the above table between Morristown and Johnson City inclusive are upon the Southern Railway, and the rate to them is a joint one, made and published by the defendants, the receiver of the Cincinnati, N. O. & T. P. R. Co. and the Southern Railway Co. Adairsville and Acworth are stations upon the Western & Atlantic Railroad and the rate to them is a joint rate made by the receiver of the Cincinnati, N. O. & T. P. R. Co. and the Nashville, Chattanooga & St. Louis R. Co.

The rates from Cincinnati to the same points are as follows:

To		
Dayton, Tennessee,	- - - - -	19 cents.
Chattanooga, "	- - - - -	19 "
Morristown, "	- - - - -	17 "
Cleveland, "	- - - - -	15 "
Sweetwater, "	- - - - -	15 "
Lenoir, "	- - - - -	15 "
Mascot, "	- - - - -	17 "
Afton, "	- - - - -	17 "
Johnson City, "	- - - - -	17 "
Adairsville, Ga.,	- - - - -	22 "
Acworth, "	- - - - -	22 "

The Railroad Commission of Kentucky complains: First, that the rates from Nicholasville are unreasonable and discriminate against Nicholasville.

Second: That the joint rates made by the defendant Receiver of the Cincinnati, N. O. & T. Pac. R. Co. and the Southern Railway Company from Nicholasville to the points upon the Southern Railway as above are in violation of the fourth section for the reason that they are more than the rates from Cincinnati, a more distant point over the same line.

The defendants all answer that the rates in which they are respectively interested are reasonable, and the Receiver of the Cincinnati, N. O. & T. Pac. R. Co. and the Southern Railway Company further answers that the joint rates from Nicholasville to the points upon the Southern Railway are not in violation of the fourth section for the reason that they are not made under the same circumstances and conditions with the rates from Cincinnati. No attempt is made to point out in the answers wherein this difference in circumstances and conditions consists.

The testimony adds but little to the pleadings. The person in whose interest the complaint was made and prosecuted testified that in his opinion the rates were excessive. He did not profess to have any special knowledge on the subject of rates but came to this conclusion entirely by a comparison of the rates in question with certain other rates over the same lines, as, for instance—the rates from St. Louis, Chicago and Milwaukee to these same points and from Louisville, Ky., to Newport News over the same lines in part.

By way of illustration, Dayton, Tenn., and Acworth, Ga., the two points among those complained of which are respectively the nearest and most distant from Nicholasville, may be taken. The rates and distances to these stations are as follows:

To DAYTON, TENN.

<i>From</i>	<i>Rate.</i>	<i>Distance.</i>
Nicholasville, Tenn., - - - -	16 cents.	206 miles.
St. Louis, Mo., - - - -	26 "	509 "
Chicago, Ill., - - - -	27 "	593 "
Milwaukee, Wis., - - - -	29 "	688 "

To ACWORTH, GA.

<i>From</i>	<i>Rate.</i>	<i>Distance.</i>
Nicholasville, - - - -	22 cents.	347 miles.
St. Louis, Mo., - - - -	27 "	574 "
Chicago, Ill., - - - -	30 "	696 "
Milwaukee, Wis., - - - -	32 "	781 "

The distance from Louisville, Ky., to Newport News is 718 miles and the rate $14\frac{1}{2}$ cents.

The opinion of the witness that the rates in question are unreasonable is entitled to no weight as evidence, since he professes to have no knowledge aside from what he derives from this comparison. Does the comparison itself make out this branch of the complainant's case? Does it fairly establish the fact that the rates complained of are unreasonable or that they discriminate against Nicholasville?

We do not think it does. Distance is always an element in determining the reasonableness of a rate. It is sometimes a controlling element. In the making of rates under actual conditions, however, it is often largely, and sometimes, within certain limits, entirely, disregarded. The Railway Commission of Texas, for instance, makes a progressive-distance tariff in many instances up to a certain point, and beyond that a blanket rate wholly disregarding distance. We call attention to this, not in approval of it, but merely to indicate that this question is solved by the people from their standpoint and the railroads from theirs, in some cases with the same result. It is well known that in almost all cases distance is less regarded as it becomes greater. The through rate over long routes is almost never a fair test of what the rate per ton per mile ought to be upon local divisions of that route. In this case St. Louis, Chicago, and Milwaukee are all important grain centers. The rates quoted from these several places are very probably really parts of a longer through rate. We know nothing about the conditions under which they are made. We have no information as to the volume of traffic, the proportion which is local, the gross income, the cost of operation, the cost of construction, nor as to any of the numerous factors which properly enter into the solution of this question. We have merely this comparison of rates, and while that is certainly legitimate evidence tending to support the complainant's case, and while in some instances it might be sufficient to make out a similar charge, we do not feel that it does in the present instance.

The fact that 22 cents per 100 pounds is charged for a distance of 347 miles, while but 32 cents is charged for a distance of 781 miles, does not show, in and of itself, that the former charge is excessive or discriminating.

Neither can we entirely ignore the testimony of the defendants, although we do not attach great weight to it. The freight agents

of the several carriers all testified that in their opinion the rates in question were reasonable, and the freight agent of a neighboring road gave his opinion to the same effect.

The question for determination is as to the reasonableness of the particular rate. Upon this question a witness may certainly give an opinion as evidence, but that opinion must depend upon reasons which are in the main capable of being considered and comprehended. If a freight agent believes that the rate which he makes is a reasonable one, he must have some reason for that belief. Let him state his reason along with his opinion, and the opinion will be entitled to credit according as his reason commends itself to the judgment of the trier. In this case, however, the witnesses all have a special knowledge of the situation which entitles them to express an opinion of value; that opinion they have given under oath; its correctness has not been challenged upon cross-examination, and we think it should be entitled to some consideration.

2. It is conceded that the rates for the less distance from Nicholasville are greater than those for the entire distance from Cincinnati, but alleged that the circumstances and conditions under which these rates are made are not the same. The only fact relied upon in the proofs as creating such dissimilarity is railway competition. We have repeatedly decided that competition between railways subject to the act cannot create the necessary dissimilarity under the fourth section. *Brewer & Hanleiter v. Louisville & N. R. Co.* 7 I. C. C. Rep. 224, and cases there cited. In accordance with those decisions we now hold that the charging of a higher rate from Nicholasville than from Cincinnati is unlawful.

It appeared upon the hearing that certain grain went forward from Cincinnati at less than the published rate. When the rate from a particular locality by some other Ohio river gateway was less than *via* Cincinnati, the defendants south of the Ohio were accustomed "to shrink the rate" sufficiently to make the total rate by their line equal to the rate by the other line. This shrinkage appeared to be generally 3 cents per 100 pounds, and grain going from certain quarters was apparently entitled to a rate that much less from Cincinnati south than the regular published tariff between the same points.

This practice seems to have been in effect analogous to that of "protecting the through rate" recently under discussion *Re Alleged Unlawful Rates in the Transportation of Grain by the Atchison, T. & S. F. R. Co.* 7 I. C. C. Rep. 33.

The thing done is probably unlawful, since it results in shipping at a rate different from the published rate, and should be discontinued; but as it was not referred to in either the complaint or the answers, and was not very clearly developed in the testimony, no formal order will be made in reference to it.

The complaint should be dismissed as to the Nashville, Chattanooga & St. Louis Railway Company. The Receiver of the Cincinnati, New Orleans & Texas Pacific Railway Company and the Southern Railway Company should, upon the facts as they existed when this complaint was made and heard, be ordered to desist from the violations of the fourth section above stated; but inasmuch as it appears from an inspection of the tariffs on file that, by a joint tariff effective September 11, 1897, the rates were so altered as to remove the objection under the fourth section, no formal order in that respect will be issued at this time.

COMMERCIAL CLUB OF OMAHA, *Complainant,*

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY; FREMONT, ELKHORN & MISSOURI VALLEY RAILROAD COMPANY; CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY; CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY; BURLINGTON & MISSOURI RIVER RAILROAD COMPANY in Nebraska; UNION PACIFIC RAILWAY COMPANY and S. H. H. CLARK, OLIVER W. MINK, E. ELLERY ANDERSON, JOHN W. DOANE and FREDERICK R. COUDERT, *Receivers of UNION PACIFIC RAILWAY COMPANY, Defendants.*

(No. 407.)

Decided November 18, 1897.

1. While like or "group" rates are frequently applied to cities considerably further apart than are Omaha and Council Bluffs, the usage in this regard is not so uniform and well established as to make an exception at those cities even *prima facie* unlawful.
2. The public right to a just relation of rates between rival communities arises from the statute which forbids discriminating charges, and that right cannot be abridged or enlarged by agreements of carriers with each other, nor by promises made to shippers.
3. Council Bluffs, on the east bank of the Missouri River, is more favorably situated than Omaha, on the west side of that river, in regard to traffic with points in Iowa, and the defendant carriers are not to be condemned for recognizing such natural advantage of location in adjusting their charges; nor does it follow that rates should be the same from Omaha and Council Bluffs into Iowa because they are the same from those cities into Nebraska.
4. Omaha and Council Bluffs, on opposite sides of the Missouri River, are connected by an expensive bridge owned and operated by the U. P. Ry., and also used under lease by other carriers. Rates at Omaha and Council Bluffs are substantially the same to and from all points, except points in Iowa west of the west bank of the Mississippi River, and rates to and from

those points are usually the bridge toll higher for Omaha than for Council Bluffs. Rates from the south are made the same to both cities by the competition of railways operated on both sides of the Missouri River. Rates from the west are the same to these cities and other common points as far east as Chicago, and are part of an extensive system of charges applied by the transcontinental lines. Rates from the east are as low to Omaha as to Council Bluffs; and this equality was brought about some fifteen years since by increasing rates to Council Bluffs to the amount of the bridge toll as then fixed. For reasons stated in the report this parity of rates from eastern points is a considerable advantage to Omaha. In view of the conditions affecting transportation to and from points in Iowa, and of the whole rate situation of the two places,—*Held*, That the charge of unjust discrimination against Omaha is not sustained, and that the complaint should be dismissed without prejudice.

6. To justify interference by the Commission with the adjustment of rates as between rival localities it must appear that the preference and advantage to the one, and the corresponding prejudice and disadvantage to the other, are so appreciable, and established with such a degree of certainty, as to be justly declared unreasonable.

W. D. McHugh for complainant.

Charles F. Manderson for the C. B. & Q. R. R. Co. and the Burlington & M. R. R. Co. in Nebraska.

Burton Hanson for the C. M. & St. P. Ry. Co.

Lloyd W. Bowers for C. N. & N. W. Ry. Co. and the F. E. & M. V. R. R. Co.

Robert Mather and *M. A. Low* for the C. R. I. & P. Ry. Co.

John M. Thurston and *W. R. Kelly* for the Un. Pac. Ry. Co. and its Receivers.

Lewis & Holmes for Interveners (merchants of Council Bluffs).

REPORT AND OPINION OF THE COMMISSION.

KNAPP, Commissioner:

The complaint in this proceeding sets forth that the defendant carriers maintain freight rates between Omaha or South Omaha, Neb., and points in the State of Iowa, west of the Mississippi River, which are made by adding to the rates in force between Council Bluffs and such Iowa points the prevailing bridge tolls over railway bridges across the Missouri River at or near Omaha and Council Bluffs, while on practically all other freight transported to or from Council Bluffs, Omaha and South Omaha the same rates are applied. In other words, it is shown that rates are

the same from the Pacific Coast to these points, or from these points into Nebraska and other States west of the Missouri, as well as to and from the South and all points on and east of the Mississippi River, whether the shipping point or destination is Omaha, South Omaha or Council Bluffs; whereas on traffic carried from or to places within the State of Iowa the Omaha and South Omaha rates are higher than Council Bluffs' rates by the amount of these bridge tolls. The complainant therefore alleges that the several defendants, by charging higher freight rates between Omaha or South Omaha and points on their respective lines in the State of Iowa than they have in force between Council Bluffs and the same Iowa points, subject Omaha and South Omaha shippers to unjust discrimination and give an unlawful preference to the shippers of Council Bluffs. It is also averred in the complaint that the bridges across the Missouri River, which are used by defendants to carry traffic to and from Omaha and South Omaha, "form a part of their continuous tracks and are not different from any other bridges or parts of tracks included within and forming their continuous lines of railway;" wherefore it is claimed that the carriers in question "are not permitted to make greater charges under any circumstances for a bridge where it forms a part of their continuous road than is justified by the actual mileage."

The defendants admit that their rates are adjusted substantially as stated in the complaint, but deny that any violation of law results from such adjustment. Upon the hearing at Omaha, Messrs. Deere, Wells & Co. and a number of other merchants and dealers doing business at Council Bluffs were allowed to intervene in opposition to the complainant.

The nature of the controversy will more fully appear from a statement of the material facts, which are found as follows:

The complainant, the Commercial Club of Omaha, is an association or mercantile society, incorporated under the laws of Nebraska, and its membership is composed of merchants, dealers and shippers engaged in business at Omaha and South Omaha in that State.

The defendants are severally common carriers engaged in the transportation of interstate commerce, and as such subject to the jurisdiction conferred by Congress upon this Commission.

Omaha is situated upon the west bank of the Missouri River. Council Bluffs is directly opposite on the east bank. The distance between the depots of the Union Pacific Railway Company in the two cities is about 3 miles. South Omaha is situated some 4 miles south and west of Omaha, and about 7 miles from Council Bluffs. The only defendant owning a bridge across the river at this point, and having direct rail communication between the three places, is the Union Pacific Railway Company.

This bridge is used also by the Chicago, Milwaukee & St. Paul, and by the Chicago, Rock Island & Pacific. The Chicago & Northwestern and the Fremont, Elkhorn & Missouri Valley roads carry freight over their own bridge at Blair, Neb., about 25 miles above Omaha. The Chicago, Burlington & Quincy and Burlington & Missouri River roads have a bridge at Plattsmouth, Neb., 25 miles south of Omaha; another at Nebraska City, about 60 miles below Omaha; and still another at Rulo, Neb., 120 miles south of Omaha. The Chicago, Milwaukee & St. Paul Railway does not extend into Nebraska, and the road of the Union Pacific does not run east of Council Bluffs, Ia. The Chicago, Rock Island & Pacific Railway extends southwesterly from Omaha through Lincoln, to Fairbury and Nelson, Neb., and from Fairbury into Kansas and Colorado. The Chicago & Northwestern Railway, and the Fremont, Elkhorn & Missouri Valley road, part of the Northwestern system, the Chicago, Burlington & Quincy Railroad, and the Burlington & Missouri River Railroad, part of the Burlington system, run through Nebraska from east to west with various branch lines. All of the defendant systems, except the Union Pacific, carry traffic between points in Iowa and through that State to points on and east of the Mississippi River.

Rates to or from Omaha and South Omaha are higher than Council Bluffs' rates on traffic from or to points in Iowa west of the Mississippi River. Rates from Council Bluffs are higher than from Omaha on traffic to the following points in Nebraska:

On the Burlington system, stations between Omaha and Gretna, 21 miles west, take somewhat higher rates per 100 pounds from Council Bluffs than from Omaha. This difference at Chalco, about 15 miles west of Omaha, is from 1 to 3 cents, except as to classes C, D and E, on which the rates from both points are the same. At Gretna, the difference is 2 cents on the first two classes, 1 cent

on classes 3, 4 and 5, and on the other classes the rates are the same from both points. At Plattsmouth, Neb., where the Burlington road crosses the Missouri River, the rates from Council Bluffs are from $\frac{1}{2}$ to 4 cents higher than from Omaha, except on class D, which takes the same rate from both points.

The rates from Council Bluffs to points on the Burlington system intermediate between Omaha and Plattsmouth are also higher than from Omaha. At Bellevue, one of these intermediate points and 4 miles from Omaha, and at La Platte, another of such points and 14 miles from Omaha, the rates from Council Bluffs are the bridge toll added to rates to Plattsmouth, but not to exceed certain specified class rates plus the bridge toll. Five cents per hundred is the bridge toll, except upon a few articles for which lower tolls are specified. Rates so made from Council Bluffs to Bellevue are, using the 5-cent bridge toll, higher than those from Omaha to Bellevue by from 4 to 7 cents; and the difference against Council Bluffs at La Platte is from 3 to 6.6 cents.

On the Northwestern system (Fremont, Elkhorn & Missouri Valley), the stations in Nebraska from Omaha to Arlington take higher rates from Council Bluffs than from Omaha. Such difference at Omaha Heights, 5 miles from Omaha, is $4\frac{1}{2}$ to 11 cents; at Washington, 20 miles from Omaha, it is from $3\frac{1}{2}$ to $4\frac{1}{2}$ cents; and at Arlington, 29 miles west of Omaha, the rates from both points are the same, except that the class E rate from Council Bluffs is $\frac{1}{2}$ cent higher than from Omaha.

On the Union Pacific Railway the rates from Council Bluffs and Omaha are the same, except that to South Omaha, Albright and Averys, 4 to 8 miles from Omaha, the rates from Council Bluffs are 5 cents on classes 5, A, B, and C, 4 cents on class D, and 3 cents on class E, while from Omaha the rate on each of these classes to South Omaha is \$4.00 per carload, and to Albright and Averys \$5.00 per carload, maximum weight 40,000 pounds.

Except as above stated, rates to and from Omaha, South Omaha and Council Bluffs over all lines of railway, from or to points generally in the United States, are practically the same. The rates between Iowa points and Omaha or South Omaha are substantially the bridge tolls across the Missouri River above the

rates between such points in Iowa and Council Bluffs. Rates of the Northwestern system from Omaha to Iowa points are not, however, invariably the bridge arbitrary above Council Bluffs rates. A number of exceptions are shown in an exhibit filed by counsel for that system, but most of the stations in Iowa to which Omaha rates are not the bridge arbitrary in excess of those from Council Bluffs are situated at considerable distances east of Omaha, 150 miles or more on some of its lines or branches, 200 miles and over on others.

The charges in force over the Union Pacific bridge are set forth in Union Pacific Freight Tariff I. O. C. No. 505, in effect March 24, 1897, as follows:

BETWEEN OMAHA AND COUNCIL BLUFFS.

Five cents per 100 pounds except on freight in carloads as specified below:

Bran, Canned Goods, Cinders, Fence Posts, Flour, Flaxseed, Grain, Hay, Hoop Poles, Pig Iron, Lath, Lime, Common Lumber, Meal, Oil Cake, Oil in Tanks or Barrels, Piling, Plaster, Potatoes, Salt, Sawdust, Scrap Iron, Shingles, Common Soap, Rough Stone, Stucco, Telegraph Poles, Ties, 3 cents per 100 pounds. Brick, Coal, Coke, 2 cents per 100 pounds. Soft Coal originating in Iowa or in Missouri west of Mississippi River, \$4.00 per car from Council Bluffs to Omaha. Coal Tar, Cement, Ice, Sand, Wood (fuel), \$5.00 per car. Vinegar, \$10.00 per car. Horses, Mules, Cattle, Hogs, or Sheep, \$6.00 per car. Slag, \$4.00 per car, Omaha to Council Bluffs. Paper, \$6.00 per car, Omaha to Council Bluffs. Lumber, \$5.00 per car, Omaha to Council Bluffs, when destined to Iowa points "west of but not including the Mississippi River."

BETWEEN COUNCIL BLUFFS AND SOUTH OMAHA.

Classes 1, 2, 3, 10 cents per 100 pounds. Class 4, 9 cents per 100 pounds. Classes 5, A, B, and C, and Lumber, 5 cents per 100 pounds. Class D, 4 cents per 100 pounds. Class E, and Salt, 3 cents per 100 pounds. Brick, 2½ cents per 100 pounds. Soft Coal and Coke, 2 cents per 100 pounds. Soft Coal, Council Bluffs to South Omaha, \$5.00 per car originating in Iowa and Missouri west of Mississippi River. Ice, \$5.00 per car. Cord Wood, \$6.00 per car. Live Stock, \$6.00 per car, Council Bluffs to South Omaha; \$4.00 per car, South Omaha to Council Bluffs, and Council Bluffs to Omaha when from stations in Iowa on C. & N. W. and O. & St. L. Rys. Sod, \$8.00 per car, Council

Bluffs to South Omaha. Butter Tubs, $3\frac{1}{2}$ cents per 100 pounds, South Omaha to Council Bluffs. Baskets, 3 cents per 100 pounds, South Omaha to Council Bluffs.

The testimony is to the effect that the minimum carload bridge toll on most freight is \$4.00 and the maximum \$5.00 per car. Substantially the same rates are charged for such transportation between Omaha or South Omaha and Council Bluffs by carriers using other bridges near Omaha.

There is nothing in the case to suggest, nor is it claimed by complainant, that the bridge tolls in question are excessive; they are accordingly found to be reasonable for the service rendered.

The rates of freight charged between Council Bluffs and other points in the State of Iowa are those prescribed by the Iowa Railroad Commission. These rates are materially less for like distances than the rates in force in Nebraska and other neighboring States. Generally speaking, however, Iowa is the more thickly-settled and productive State, and furnishes a large volume of trade for which Omaha dealers are in competition with dealers at Council Bluffs.

The maximum rates prescribed by the Iowa Railroad Commission on classes 1 to 5, inclusive, added to a bridge arbitrary from Omaha of 5 cents, are shown below in connection with lowest actual tariff rates on the Northwestern and Burlington systems for like distances from Omaha into Nebraska. Similar results would be obtained by comparing the rates on the Union Pacific system in Nebraska with rates for like distances in Iowa prescribed by the Commission of that State, the bridge tolls in question being added to the latter. In this table the distance across the river from Omaha is disregarded, and the comparison made is subject to any existing differences in classifications applying in Iowa and Nebraska. It further appears by this table that rates from Omaha for given distances into the State of Iowa, even with the bridge tolls added, are considerably lower than rates for like distances from Council Bluffs into the State of Nebraska.

DISTANCES	NORTH WESTERN SYSTEM.					BURLINGTON SYSTEM.				
	Classes					Classes				
	1	2	3	4	5	1	2	3	4	5
INTO NEBRASKA FROM OMAHA.										
INTO IOWA FROM COUNCIL BLUFFS.										
50 miles into Nebraska	80	25	20	15	12	80	25	20	15	12
50 miles into Iowa	25	22	18.34	15	12	25	22	18.34	15	12
75 miles into Nebraska	85	28	23	20	15	85	30	25	20	17
75 miles into Iowa	27	23.7	19.67	16	12.7	27	23.7	19.67	16	12.7
100 miles into Nebraska	85	28	23	20	15	85	31	27	24	20
100 miles into Iowa	29	25.4	21	17	13.4	29	25.4	21	17	13.4
125 miles into Nebraska	85	31	27	24	20	40	36	32	25	20
125 miles into Iowa	33	27.85	22.75	18.65	14.85	33	27.85	22.75	18.65	14.85
150 miles into Nebraska	49	44	36	25	20	51	45.5	38	30	26
150 miles into Iowa	37	30.8	24.5	20.8	16.8	37	30.3	24.5	20.3	16.3
175 miles into Nebraska	55	49	41	32	26	55	51	45	37	31
175 miles into Iowa	41	32.75	26.25	21.05	17.75	41	32.75	26.25	21.95	17.75
200 miles into Nebraska	65	55	45	37	29	63	59	51	44	39
200 miles into Iowa	45	33.2	28	23.6	19.2	45	35.2	28	23.6	19.2
220 miles into Nebraska	68	58	49	40	35	67	62	57	46	40
220 miles into Iowa	48.2	37.16	29.4	24.88	20.36	48.2	37.16	29.4	21.88	20.36
250 miles into Nebraska	76	65	58	48	43	70	65	60	49	44
250 miles into Iowa	53	40.1	31.5	26.8	22.1	53	40.1	31.5	26.8	22.1

Prior to about August, 1882, a bridge charge between Omaha and Council Bluffs was exacted on all traffic. Goods coming to Omaha by rail from the east paid such toll, and if reshipped to Iowa points it was again collected; while freight from the west to Council Bluffs was charged the bridge rate over that to Omaha, and if transported back into Nebraska the charge for carrying

across the bridge was again imposed. In that year, as nearly as can be determined from the evidence, the Missouri Pacific system was extended to Omaha on the west side of the river, and became a competitor for traffic reaching Omaha from the east and south. With the view of preventing a rate war which seemed to be threatened, the several lines then entering Omaha and Council Bluffs appear to have come to an understanding in reference to rates to and from these cities. The complainant contends that an agreement was then reached by which all rates to and from Omaha were to be the same as rates to and from Council Bluffs. The evidence, however, does not warrant a finding that this agreement was permanent and definite to the full extent claimed; nor is it deemed necessary to determine what the precise understanding was in this regard. The facts are that some reduction was made in the bridge toll, and that rates to Council Bluffs, from points on and east of the Mississippi River, were sufficiently raised to give Omaha from those points the same rates as Council Bluffs. The increased rates to Council Bluffs were substantially the bridge tolls, as we understand the evidence. It appears, however, that this increase did not apply to agricultural implements and possibly some other articles. But as rates on that description of traffic are now the same to both places, we infer that they were the same prior to the readjustment in question. At the same time the bridge tolls were removed from Council Bluffs' traffic to and from the West, except as to the territory within a radius of some 30 or 40 miles from Omaha. In this territory the former difference appears to be still maintained. The Iowa Commission had not then prescribed a general reduction of freight rates within that State, and did not do so until about the year 1889.

About the time this readjustment of rates took effect, the Union Pacific Railway Company appears to have made contracts of lease with the Chicago, Milwaukee & St. Paul Railway Company and with the Chicago, Rock Island & Pacific Railway Company, whereby the latter companies, for an annual rental of \$45,000 to be paid by each of them, acquired the right to operate their trains over the Union Pacific bridge. In addition to this rental, there appear to be terminal and switching charges at Omaha which are borne by these companies. They also con-

tribute to the cost of maintaining the eastern approaches to this bridge, but to what extent does not appear.

The defendants operating lines through Iowa, and crossing the Mississippi River into Illinois, carry traffic between Iowa towns and Mississippi River points in Illinois at no greater rates than are charged between opposite Mississippi River points in Iowa and such Iowa towns. For example, Davenport, Ia., Rock Island and Moline, Ill., have the same in and out rates, and any bridge expenses are absorbed by the roads. Kansas City, Mo., St. Joseph, Mo., Leavenworth and Atchison, Kans., have the same rates irrespective of destination or origin of traffic, and so do St. Paul and Minneapolis. The same parity of rates, however, does not seem to be maintained in all cases as between St. Louis and East St. Louis. The extent to which the conditions at these various points resemble those at Omaha and Council Bluffs is not shown.

The defendants operating roads leading from the east to Omaha and Council Bluffs are parties to tariffs naming rates to most of the places above named, and they also carry freight under schedules fixing the same rates to a number of cities on or near the Missouri River, including Omaha and Council Bluffs. Grouping rates to and from near-by competing points is practised by these defendants to a considerable extent in various localities.

The evidence is sufficiently definite and satisfactory to warrant the finding that at least 90 per cent of the aggregate tonnage received at Council Bluffs comes from the East, and at the same rates as like traffic carried to Omaha. It is equally well established that something less than one third of the aggregate tonnage distributed from Council Bluffs goes to points west of the Missouri river, the balance being carried to destinations east of Council Bluffs and mostly in the State of Iowa. It does not appear with very much certainty how much of the aggregate tonnage received at Omaha comes from the east, but probably 65 per cent or more. It appears quite probable from the testimony that about 20 per cent of the traffic distributed from Omaha goes to points east of the Missouri River, the remainder reaching various points of delivery through a wide extent of territory west of Omaha.

It should be stated, however, that in the respect last above

referred to there is great difference between different articles of merchandise. Sugar, for example, is largely shipped from the Pacific Coast and from the South, as well as dried fruits and kindred commodities. On the other hand, dry goods, hardware, agricultural implements, vehicles and manufactured articles generally come almost wholly from the east. There is a considerable movement of traffic from the south, and also shipments from the Pacific Coast which reach these destinations by other routes than the Union Pacific.

At the time when the present relation in rates between Omaha and Council Bluffs was established, the former had a population of about 40,000 and the latter of about half that number. In the fifteen years that have since elapsed Council Bluffs appears to have doubled its population, while Omaha—including South Omaha—has increased to nearly four times its population in 1882. The commercial growth of the two cities during that period appears to have been in something like the same proportion. In the line of agricultural implements, and possibly road vehicles, Council Bluffs seems to have kept fully abreast of Omaha, but in nearly every other branch of wholesale business the latter city has grown much more rapidly than the former. At one time or another during this period several wholesale houses have removed from Council Bluffs to Omaha, and it does not appear that any business establishment has been transferred from the latter town to the former. During this period the stockyards and related industries at South Omaha have been established, and reached an importance and magnitude second only to those of one other town on the Missouri River. There were formerly stockyards at Council Bluffs, though of what extent does not appear, but these have been removed and re-established at South Omaha. Practically the only lines of business in Council Bluffs which have kept pace in growth and development with those in Omaha are machinery, farming implements and vehicles, and this is at least partially accounted for by the circumstance that available ground for handling wares of this description is cheaper and more favorably located for the purpose in Council Bluffs.

There is more or less competition between the wholesale dealers of Council Bluffs and Omaha in groceries, fruits, drugs and hard-

ware; though it is to be inferred from the evidence that even in these branches of trade the volume of business transacted by Omaha merchants is much in excess of that secured by their Council Bluffs competitors. No competition exists between Council Bluffs and South Omaha, as the latter place has been built up mainly by the live stock and packing industries, and no similar industries are now carried on at Council Bluffs. The most active and even competition between the two cities is in the sale of farming implements, vehicles and like merchandise, and in these lines the competition of Council Bluffs appears to be well sustained and successful.

Neither Omaha nor Council Bluffs dealers appear to be able to do business much more than 150 miles east of the Missouri River, because at any greater distance they meet the successful competition of wholesale houses on and east of the Mississippi River.

There is a large movement over the lines of the defendant carriers of live stock from stations in Iowa, Missouri, Nebraska and other States to South Omaha, Kansas City and other packing house points; and tariffs are cited showing that live stock is carried to those destinations, from stations in Missouri and Nebraska, at lower rates than those prescribed by the Iowa Commission for like distances within that state.

The foregoing appear to be the material and controlling facts disclosed by this investigation, but some others of minor importance may be mentioned in connection with the following statement of the conclusions reached by a majority of the Commission.

The discrimination complained of in this case is based upon the relation of rates, which has existed since 1882, for the transportation of freight between Omaha and Council Bluffs respectively and points in the State of Iowa west of the Mississippi River. In support of its contention the complainant advances three propositions:

First. Council Bluffs has the same in-rates from all directions as Omaha.

Second. Council Bluffs has the same out-rates to Nebraska points as Omaha.

Third. Omaha pays a bridge toll, in addition to the Council Bluffs rate, on shipments to Iowa points.

In answer to the first position the following observations are made. Shipments from the south into Omaha or Council Bluffs come over several systems of roads, some of which reach these points from the Nebraska and some from the Iowa side of the Missouri River. The Iowa roads, in order to do business in Omaha in competition with Nebraska roads, must carry through Council Bluffs to Omaha at the Omaha rate of their competitors. The Nebraska roads in like manner and for a like reason must carry to Council Bluffs—even if the traffic goes by way of Omaha—at the Council Bluffs rate of the Iowa roads. This situation virtually compels the same rate to both towns on traffic coming from the south. The carriers complained of are not responsible for this situation or chargeable with any resulting consequences to either community. Indeed, it is not suggested on behalf of Omaha that this equality of rates on traffic from the south is, in itself, an injustice to that city, and no change in those rates is sought by complainant.

The rates from the west to these points are embraced in the system of transcontinental through rates which are the same not only to Omaha and Council Bluffs, but also to common points as far east as Chicago. The influences which brought about this parity of rates to common points, on through shipments from the west, are well understood by those who are acquainted with the routes and relations of the various trans-continental lines. The existence of this system of through rates, and the fact that under it Council Bluffs takes the same rate from the west as Omaha, operates no more to the disadvantage of Omaha as against Council Bluffs than it does as against Chicago or any of the common points east of Omaha. So far as the Council Bluffs rate on traffic from the west is concerned, it is claimed that none of the defendants are responsible for its maintenance, unless it be the Union Pacific, which has its eastern terminus at Council Bluffs. The fact that the Union Pacific makes like rates to Omaha and Council Bluffs requires other carriers to do the same, if they participate in western business to those points. If the Union Pacific is in sympathy with the complainant, as has been intimated, its attitude in that regard may be explained by the circumstance that it carries to no Iowa points except Council Bluffs, and therefore has nothing to lose by lower rates from Omaha on the lines

of the other defendants. To this it may be added that this equality of rates on shipments from the west is not complained of or sought to be changed in this proceeding.

The fact that traffic from the east is carried to Omaha at the same rate as like traffic to Council Bluffs is, in itself considered, an obvious and considerable advantage to Omaha. As stated in the findings, the existing equality in rates was brought about by some reductions in the bridge tolls in question and by then increasing the Council Bluffs rate to an amount equal to the bridge toll thus reduced. In a sense, therefore, Council Bluffs may be said to have paid the carriers from 1882 to the present time, on all shipments from the east, the equivalent of this bridge toll, although its shipments from that quarter were not carried across the bridge. And this has occurred as to much the larger portion of all such shipments to Council Bluffs. During the fifteen years since the alleged discrimination against Omaha commenced, Council Bluffs appears to have paid on more than nine tenths of its aggregate tonnage a transportation charge which, in comparison with the Omaha rate, exceeds the latter to the amount of a reasonable compensation for the additional service across the bridge. So far as this parity of rates on shipments from the east is concerned, it is Council Bluffs rather than Omaha that has been placed at undue disadvantage. It goes without saying that no change in the particular rates now under consideration is desired by the complainant.

The second position of complainant requires but little comment. As above stated it appears from the findings that fully 90 per cent of the total tonnage received at Council Bluffs has practically paid a bridge toll, because charged the same rates as like shipments to Omaha; and that less than one third, or about 32 per cent, of the entire tonnage distributed from Council Bluffs goes to points west of the Missouri river. On this 32 per cent of shipments from Council Bluffs, which, with an additional 58 per cent of all shipments to that place, has already been subjected to a bridge charge or its equivalent, the bridge toll is not again imposed when the traffic crosses the bridge for the first time to reach Nebraska destinations. It does not seem unfair that this 32 per cent of out-shipments from Council Bluffs should go into Nebraska at the same transportation cost as like shipments from

Omaha. In both cases the traffic has been once carried across the bridge and the carrier has been paid once for performing that service. Therefore, as to the trade in the territory west of the Missouri, Omaha competes with Council Bluffs, so far as freight rates are concerned, on terms of equality. It is not charged that this parity of rates on west-bound shipments operates to the undue prejudice of Omaha or the undue preference of Council Bluffs. There is no proof or claim that the Omaha dealer is at any disadvantage in competing for Nebraska business. Nor is it desired by complainant to change the situation in this respect. On the contrary, as appears from the testimony of a witness called in its behalf, the demand of Omaha would not be satisfied by the imposition of bridge tolls on Council Bluffs shipments to Nebraska points.

The third proposition of complainant presents the only feature of the rate system in question which is sought to be changed. It is insisted that the defendant carriers should be required to give Omaha the same rates as Council Bluffs on shipments to and from Iowa points; and this demand is made under the provisions of section 3 of the Act to Regulate Commerce.

Among other things it is said that "This discrimination in rates is contrary to universal usage." This statement is not strictly true in point of fact, for there appear to be other exceptions—as well as the one under consideration—to a rule of rate-making which is known to be of quite general observance. While numerous instances are found of like or "group" rates applied to cities considerably farther apart than are Omaha and Council Bluffs, it can hardly be maintained that the usage in this regard is so uniform and well established as to make the exception even *prima facie* unlawful. The circumstance that this custom is frequently followed may be properly taken into account, but as an independent fact it is by no means controlling. The situation under review seems in its general aspects not unlike that at St. Louis and East St. Louis where bridge tolls are in some cases imposed.

It is also charged that "this discrimination was established in direct and flagrant breach of contract." One difficulty with this position is that we have not been able to find the facts in accordance with such a contention. That some understanding was arrived at by the interested lines, or most of them, for equalizing

Omaha and Council Bluffs rates is reasonably certain; and Omaha shippers may have been justified in expecting that their rates in all directions, and to and from all points, would be made the same as those established for Council Bluffs. But the evidence does not warrant us in finding that the agreement then made by the carriers was so definite and complete as to include the local rates now in question; and the readjustment which actually took place may have been honestly regarded as a substantial fulfillment of all promises in respect of Omaha rates. However that may be, we are of opinion that this agreement of the carriers, even if established to the full extent claimed, would not materially aid the complainant. The Commission has no authority to enforce the performance of contracts; and the rights of the parties to this proceeding are not based upon contract obligations. If the rates in controversy discriminate unjustly against Omaha, they would be none the less unlawful though maintained under the most formal contract; and if they do not thus discriminate the carriers may rightfully continue them in force, though in so doing they violate their proven agreement.

What has just been said respecting any original agreement to give Omaha the same rates as Council Bluffs applies with even greater force to the subsequent promise to that effect alleged to have been made by one of the defendants. Granting that such a promise was given, though the evidence on that point is far from convincing, it is difficult to see how that circumstance supports the complainants' demand or has any material bearing upon the question to be determined. The public right to a just relation of rates between rival communities arises from the statute which forbids discriminating charges, and that right can neither be abridged nor enlarged by agreements of carriers with each other, or by such promises to shippers as are claimed to have been made in this case.

A somewhat more serious question is presented by the further charge of complainant that "the discrimination against Omaha operates to the serious detriment of the business interests of that city." It is quite obvious that Omaha dealers must sell goods to Iowa customers at the same prices as their Council Bluffs competitors; and since the latter have some advantage in rates to Iowa points, the former must be content — other things being

equal—with smaller profits on Iowa business. Is this an injustice to Omaha merchants? Their shipments to Iowa towns require a greater service from the carriers than is performed for Council Bluffs merchants, for they are hauled a greater distance and over an expensive bridge. The charge for this extra service is admitted to be reasonable, and those for whom it is performed cannot justly complain because it is not gratuitously rendered. Independent of the fact that rates in other directions are the same from both places, and judged solely by the conditions affecting transportation into Iowa, it would seem entirely proper to exact somewhat higher rates on traffic from Omaha. The two cities are not in fact one community even in their commercial relations. They are situated in different states and upon opposite sides of a wide river which is a natural obstacle to easy communication between them. The defendant which constructed the bridge over this river, and the defendants which have leased the right to run their trains across it, are *prima facie* entitled to some compensation for their outlay. Doubtless the Omaha dealers would find their Iowa trade more lucrative if they were relieved from any charge for the bridge service which they receive, but is that of itself any reason for sustaining their demand? They are not now by any means excluded from Iowa territory. Their business extends quite as far into that state as does the business of their Council Bluffs rivals; and it is a fair inference from the testimony that, except in the line of farming implements and vehicles, the volume of Omaha trade in Iowa greatly exceeds that secured by Council Bluffs. While the difference in rates is considerable to near-by stations, the percentage of difference diminishes as more remote points are reached, because the Iowa rate increases with distance while the bridge tolls remain a constant quantity; at no point does this difference appear to be a controlling factor. Incidentally it may be remarked that, if these bridge tolls were abolished, the carriers would apparently be required to haul traffic from Omaha to Council Bluffs without pay, as the bridge toll seems to be the rate between the two cities; while to stations in the vicinity of Council Bluffs the compensation would be little more than nominal. The actual rates for minor distances on that basis were named by a witness for defendants, and the figures stated by him were not controverted by complainant; nor is the point referred to in the brief of complainant's counsel.

As respects this distributing trade in Iowa, it cannot well be denied that Council Bluffs has some natural advantage of location. Situated on the east bank of the Missouri, nearer and more accessible to the surrounding territory in Iowa, more closely identified politically and otherwise with the towns in that territory, her merchants may reasonably expect consideration from Iowa buyers as against competitors located at greater distance and in another state. If Council Bluffs is more favorably situated with reference to the trade of western Iowa, the carriers are not to be condemned for recognizing that fact in adjusting their charges. It does not necessarily follow that rates should be the same from Omaha and Council Bluffs into Iowa because they are the same from those places into Nebraska. If Council Bluffs has an undue advantage in the matter of west-bound rates, the correction of any resulting injustice to Omaha must be sought in an appropriate proceeding. Whether equal rates to Nebraska and other western points is unjust to Omaha is not now open to inquiry, for no such complaint is made and no change in those rates appears to be desired. But if it seems right, as an independent proposition, that Council Bluffs should have somewhat lower rates into Iowa, how is that right impaired by the circumstance that both places have the same rate into Nebraska? Must the relation of rates in one direction be a little more favorable to Omaha than justice seems to require, because relative rates in the other direction give Council Bluffs an advantage to which she is not strictly entitled?

So far as the claim of Omaha is based upon the whole rate situation of the two places, rather than upon the conditions affecting transportation into Iowa, it finds insufficient support in our estimation, for it does not appear to us that the general average is specially favorable to Council Bluffs. Under the present adjustment of rates—taking into account the entire in and out shipment of both cities—Omaha gets a much larger percentage of free transportation across the Missouri River than does Council Bluffs. This arises from the fact that the larger portion of traffic received comes from the east, while a still larger portion of traffic shipped out goes west of the Missouri River. Nor would this feature of traffic movement be materially altered, in our judgment, by giving Omaha the same rates as Council Bluffs on shipments into Iowa. The available territory for distribution in

Iowa is limited by the successful competition of wholesale dealers on and east of the Mississippi River. It is not probable that Council Bluffs rates would enable Omaha merchants to extend their trade much farther east than the Iowa towns now reached by them. No similar competition exists west of the Missouri, and in that direction both Omaha and Council Bluffs have access to a territory of almost unlimited extent. For a long time to come, therefore, the relative traffic movement is likely to continue substantially as at present, and that is a condition of things which practically operates, as we view the case, to the considerable advantage of Omaha.

There is nothing in the history of these towns for the last fifteen years which indicates that the prosperity of Omaha has been impeded by the maintenance of the rates in question. Her growth in population has been twice as rapid as that of Council Bluffs, and her commercial importance has increased in a corresponding degree. Notwithstanding the rates complained of the industries of Omaha, with one or two exceptions, have quite outgrown those of Council Bluffs, and several instances are shown of the transfer of business establishments from the latter place to the former. It is difficult to reconcile the facts here referred to with the claim that Omaha has been injured by reason of more favorable rates accorded to Council Bluffs.

It must be remembered that not every inequality in rates constitutes a violation of the law. Discrimination is forbidden only when it is *unjust*. Preferences and prejudices are not prohibited unless they are *undue*. The language of the statute implies that there may be discriminations which are not unjust and preferences which are not undue. Nor was it intended that the Commission should interfere with the adjustment of rates between different localities, except when necessary to the protection of public interests. There may be some disproportion in rates for which the carrier is responsible, and which possibly results in some benefits to a given community as against its commercial rival; but to justify the intervention of the Commission it must appear that the preference and advantage in the one case, and the corresponding prejudice and disadvantage in the other, are so appreciable and established with such a degree of certainty as to be justly declared unreasonable. Such a showing, it seems to

has not been made in this case. It may be that further test of this system will disclose an injustice to Omaha, and the shippers of that city should not be precluded from seeking another investigation; but upon the facts now appearing the Commission does not feel warranted in requiring these rates to be changed.

It follows that the complaint should be dismissed without prejudice; and an order will be entered accordingly.

I am authorized to say that Commissioners YEOMANS and PROUTY concur in this disposition of the case.

PROUTY, *Commissioner* :

I concur in the conclusions reached by Commissioner Knapp in this case and in the general reasoning of his opinion. The decision, however, upholds an apparent discrimination, and in order that it may not be misunderstood I wish to state briefly the exact view upon which I base my opinion.

1. The charging of a higher rate from Omaha to Iowa points is proper of itself. While Omaha is in fact only three miles west of Council Bluffs the bridge which connects the two cities is equivalent—having reference to the cost of constructing and maintaining it—to many miles of ordinary railroad. Two of the defendants actually pay \$45,000 a year for the right to operate their trains across this bridge. It is idle to say, therefore, that the carrier ought not, having reference to the cost of service, to receive any more for the carriage from Omaha than from Council Bluffs. The Commission has held within the year that the existence of a similar bridge justified a differential between the two sides of a river. *Cincinnati Freight Bureau v. Cincinnati, New Orleans & Texas Pacific R. Co., and others*, 7 I. C. C. Rep. 180. It is practically conceded that the present bridge tolls are reasonable.

2. A city is entitled to the natural advantages of its location. In actual competition it often happens that these advantages are not, and perhaps cannot be regarded, but they are always an element which it is proper for the carrier to take into account, and which should be taken into account when possible. Council Bluffs, being upon the east bank of the Missouri river, is entitled to the benefit of that fact. To remove the bridge toll on shipments east from Omaha would be, of itself, a discrimination against Council Bluffs.

3. No question is made but that the rate from Council Bluffs to points in Iowa is sufficiently low. If, therefore, these carriers are compelled to take traffic from Omaha at the Council Bluffs rate to points in Iowa, they are compelled to render that service for less than a reasonable compensation. A carrier may, as a matter of policy, voluntarily accept less than a reasonable rate, but it ought not, in the absence of some controlling reason, to be compelled to do so against its will.

4. It is urged that in this case the defendants should be compelled to forego the bridge toll from Omaha east, because they forego it from Council Bluffs west; having created this situation in part, they cannot escape from the full effect of it. It may be assumed that this would be so, provided the present adjustment of rates on the whole discriminated against Omaha in favor of Council Bluffs; but upon the testimony the discrimination is apparently the other way.

All traffic which crosses the bridge either way ought to pay toll for every time it crosses. Merchandise coming from the east to Omaha and shipped from Omaha back to points in Iowa should pay the bridge toll twice as against that same kind of merchandise brought to Council Bluffs and from there distributed to Iowa points. At the present time it pays but one bridge toll, *viz.*, that from Omaha to Council Bluffs. Upon all such freight, therefore, Council Bluffs is discriminated against to the extent of one bridge toll. Upon freight brought from the east to either Council Bluffs or Omaha and from thence shipped on to the west there is no discrimination at present since in neither case is any bridge toll paid; or rather there is a discrimination of one bridge toll in each case which may be offset, the one against the other. Upon freight coming from the west to Omaha and from Omaha distributed to Iowa points there is no discrimination, since Omaha pays one bridge toll, as it ought. Upon traffic coming from the west to Council Bluffs, which is sent back across the Missouri for distribution, Omaha is discriminated against to the extent of two bridge tolls, since that traffic has crossed the river twice and paid no toll; and upon that which goes to Iowa points to the extent of one toll, since that has crossed the river once without payment.

It appears, therefore, that under the present conditions there is a discrimination of one bridge toll against Council Bluffs upon

all traffic from the east to Omaha which returns from Omaha to points in Iowa, and that there is a discrimination against Omaha of one bridge toll upon all traffic from the west to Council Bluffs which is from there distributed to Iowa points, and of two bridge tolls upon all traffic which is sent back from there into Nebraska. Now, upon looking into the case we find that of the total traffic brought to Omaha, about 65 per cent comes from the east and that one third of this is sent back to Iowa points. Upon the other hand only one tenth of all the traffic at Council Bluffs comes from the west. There is nothing in the case to show how much of this is sent back to Nebraska, but if it all went back the amount of discrimination against Council Bluffs would still be greater upon east bound traffic to Omaha than upon west bound traffic to Council Bluffs. It seems to me, therefore, that the present adjustment of rates is a discrimination against Council Bluffs and that it ought not to be aggravated by ordering any further and additional discrimination.

It is not intended to suggest that the Commission should upon the application of Council Bluffs order the charging of the bridge tolls in all cases. That would be abstractly just, but the actual traffic conditions are such in almost all cases that it is impossible to do exact justice between localities. The traffic conditions here seem to render it necessary that the bridge toll should be disregarded in the case of most rates. All I intend to say is that the Commission ought not to order these carriers to accept less than a reasonable rate, when to do so would be, not to remedy an existing discrimination, but to intensify a discrimination which necessarily exists.

MORRISON and CLEMENTS, *Commissioners*, dissenting:

We dissent from the conclusion of the majority, and do not believe the facts warrant the reasons assigned for, or justify, the disposition made of the case.

Omaha and Council Bluffs have the same rates to and from all points in all directions except to and from Iowa. Between Omaha and Iowa points the charges are higher than between Council Bluffs and these points to the extent generally of the rate or toll over the bridge connecting these two cities, which compete for business in both Nebraska and Iowa. What is demanded in

the complaint is that the rates between Omaha and Iowa points shall be the same as the rates conceded to Council Bluffs, just as like rates are conceded between these two cities and all other points; and this claim for Omaha is only that equality which the defendant railroad companies grant to all other Missouri River points, including Atchison, Leavenworth, and Kansas City, which three places, like Omaha, are on the west bank of the Missouri River. The same rates are established and maintained by the defendant roads at their Mississippi River crossings to or from either side of that river east as well as west. Rock Island, Illinois, has the same rates as Davenport, Iowa, to and from all points east and west.

This proceeding was commenced on behalf of Omaha against the railroad companies. The complaint was that these companies unjustly discriminated against Omaha and gave undue preference to Council Bluffs by charging on shipments between Omaha and Iowa points higher rates than were then and are now received on like traffic between Council Bluffs and the same Iowa points. Several merchants, manufacturers, and traders of Council Bluffs were permitted to intervene. This intervention had the effect of clouding or obscuring the issue, and the conclusions reached appear from the reasoning of the opinion to be based on the assumption that in some respects the roads complained of have in the adjustment of their rates done injustice to Council Bluffs as well as to Omaha, and, by balancing the two wrongs one against the other, the perpetrators of both are excused and the complaint dismissed. The argument is that if Omaha is being wronged, the greater wrongs imposed upon and endured by Council Bluffs satisfies the complaint against the carriers.

The increased population, thrift, and greater growth of Omaha, it is urged, evinces the fact that the adjustment of rates has not been and is not unjust or hurtful to that city. But this greater progress is dependent upon other conditions, and, while it may have been hindered, it has not been stayed by the unfair adjustment of rates and the unequal charges Omaha merchants or manufacturers are compelled to pay. For instance, Omaha is discriminated against in the matter of cattle shipments. When cattle are delivered from Iowa points at Omaha or distributed from there to points in Iowa the rate is \$5.00 per car more than

the charges would be if the shipment had been made to or from Council Bluffs. Yet practically all such shipments are made to and from South Omaha, because, with the facilities there, the business is done with greater profit, even with the unequal and higher charges; and as in respect to this traffic, so it has been and may continue to be that Omaha may retain precedence over Council Bluffs; but this does not justify relatively unequal and unfair rates.

The fact that the larger part of the freight which is shipped into and then out of these, to some extent, rival cities comes from the east to both places at the same rate is made to contribute largely to the conclusions arrived at. In our opinion the origin of the traffic or the place from which it comes should have no weight in the determination of this case. The extent of the total tonnage in and out is not shown, only an estimate of the per cent of what comes in and then goes out is given; and in the calculations as to shipments in and out, no account is taken of the locally manufactured product, the total value of which was not definitely proven as to either of the two cities, though the census shows that as long ago as the last census year this product for Omaha exceeded \$42,000,000, while that of Council Bluffs, though considerable, was \$40,000,000 less. What justice can there be in putting goods shipped to or made at Council Bluffs into the Nebraska markets free from bridge toll or other charges which are exacted on the agricultural machinery and other things made in Omaha seeking Iowa markets?

In our judgment the evidence warrants and requires the finding of facts not found by the majority, namely, that there was a contract or agreement between the defendant roads made at the instance of the Union Pacific Company, the owner of the bridge, that there should be equality of rates into and out of these two cities, including the rates and charges to and from Iowa points which are the subject of dispute in this proceeding; and that such agreement was not without consideration. The uncontradicted testimony of Mr. Kimball, who was afterwards a vice president of the Union Pacific Company and was assistant general manager when this agreement was made, clearly shows and establishes these facts:

In the year 1882 an agreement was entered into between the

owner of the Omaha bridge, the Union Pacific Company, and its connections, the defendant companies, for the purpose of equalizing rates between Council Bluffs and Omaha on shipments into and out of both places so that in this respect there should be no distinction between them so far as it was in the power of the railroads to abolish all distinction in the matter of rates. In the words of the witness: "The object that the roads had in view at that time (was) to establish, and maintain absolute equality in, in and out rates for these two towns," and it was "understood by all of us to be practically a change in policy in respect to these two towns that would be perpetual," and "there was no difference of opinion substantially between the Union Pacific and the Eastern roads as to the advisability of making the arrangement," which was made and agreed to. Later the Eastern roads objected to including the Iowa territory and did not put in Omaha rates to and from the Iowa points or carry out that part of the agreement. It is further shown by the testimony of this witness that as a part of this agreement and in consideration that the Eastern roads would bill, charge, and run into Omaha the same as into Council Bluffs they, said Eastern roads, were to pay the Union Pacific less than the open rates of toll on the bridge. The bridge charges were so reduced, the Union Pacific giving to the Eastern lines the reduction as agreed upon, and they are still in the enjoyment of that reduction on all freight carried to and from Council Bluffs and Omaha as well as on all carried east and west through these places. This is the testimony of Mr. Kimball, who made the agreement for the Union Pacific with the other defendant companies. And there is no other testimony on the subject.

It is proved and is conceded in the opinion that the defendant roads respected, put into effect, and still adhere to the agreement as to all points east and west, except in Iowa. They also established and still maintain the same rates between interior Iowa points and the cities on either bank of the Mississippi River. They do the same at all other Missouri River points. Why should they not be required to do the same at Omaha? Fair dealing, their agreement with its consideration, their treatment of all other Missouri River points, and the law which requires equality of treatment under like circumstances and forbids undue

preference, must also forbid this exception against Omaha. The roads crossing the bridge under the agreement to do so at rates reduced or lower than established rates on freight generally, have the advantage of these lower charges on all freight carried, whether destined to be shipped from Council Bluffs and Omaha or any other point.

The opinion proceeds on the assumption that the bridge tolls are reasonable, which is not proved, but is found as a fact because "there is nothing in the case to suggest" that they are excessive. This should have no weight or bearing in the case. The bridge tolls so found to be reasonable are the rates or tolls charged on business generally and which are added to the Council Bluffs rates on shipments between Omaha and Iowa points. They exceed the tolls paid by the defendant roads which cross the bridge under the agreement at reduced rates. The reasonableness of the bridge toll was not in issue; was not before the Commission for inquiry or decision; testimony was not heard upon the subject, and the finding is not called for or justified by the circumstances, as we believe. In any view of the case we feel obliged to refuse consent to the disposition made of it. No question was made in the complaint or tried at the hearing as to the reasonableness of the tolls or of the charges for the transportation service over the bridge. The claim in behalf of Omaha was that it should pay no higher rates than Council Bluffs, to or from the same Iowa points. The higher rates exacted are discriminations against Omaha, and the interests of Council Bluffs should not be used to befog the issue between Omaha and the roads or as a means of justifying the discriminations.

If found practicable, it might be more equitable to so adjust all rates to and from these cities that the shippers to and from each would be required to pay charges based on the service rendered; but since as to all but the rates in dispute there is equality of rates into and out of these two rival cities, there should be the same equality between each of them and such Iowa points. This would place Omaha on an equality with other Missouri River points or cities on either side, including Council Bluffs.

EDWIN E. MONTELL

v.

BALTIMORE & OHIO RAILROAD COMPANY and
JOHN K. COWEN and OSCAR G. MURRAY, Receivers thereof;
SOUTHERN RAILWAY COMPANY.

(No. 479.)

Complaint filed November 12, 1896.—Answer of Southern Railway Company filed December 8, 1896.—Answer of Baltimore & Ohio Railroad Company and receivers thereof filed December 12, 1896.—Hearing had March 22, 1897.—Decided December 31, 1897.

1. On complaint of violation by defendants of sections 8 and 4 of the Act to Regulate Commerce, through charges on coal in carloads from Cumberland, Md., which were greater for the shorter distance to North Garden, Va., than for the longer distance over the same line to Lynchburg, Va., it appeared at the hearing that defendants had withdrawn and discontinued the lower rate to the longer-distance point. *Held*, That such action by defendants obviated the infractions of the law so complained of.
2. Defendants' aggregate charge for the transportation of coal in carloads from Cumberland, Md., to North Garden, Va., and their respective divisions thereof, found excessive in comparison with rates charged by defendants and other carriers to various points; but the Commission is not authorized to fix a reduced or lower rate of charges which carriers can be required to respect in the future, even if the ascertained facts warranted a finding as to the extent of the reduction which should be made.
3. Although the Act to Regulate Commerce requires that transportation charges shall be reasonable and just, and complainant prayed in his petition that defendants be ordered to establish and maintain such rate on coal in carloads from Cumberland, Md., to North Garden, Va., as should be deemed just, reasonable and lawful, the Act as recently interpreted by the courts makes no provision under which carriers can be ordered or required to establish or maintain any rate other than such rate of charges as any such carrier may fix and establish for itself.

Hugh L. Bond for Baltimore & Ohio Railroad Company and Receivers.

Fairfax Harrison for Southern Railway Company.

Edwin E. Montell for complainant.

REPORT AND OPINION OF THE COMMISSION.

MORRISON, *Commissioner*.

The complaint states that the defendants are carriers of coal from Cumberland, Maryland, to North Garden, Virginia, and Lynchburg, Virginia, over the line formed by the lines of the two defendant companies, connecting at Strasburg, Virginia; that the carriage from Cumberland to both North Garden and Lynchburg is continuous, and that North Garden is an intermediate station nearer than Lynchburg to Cumberland on the line so formed.

That the defendants charge and receive and the complainants and others are required to pay for the transportation of coal from Cumberland and from Georges Creek mines, near Cumberland, to North Garden, rates and charges largely in excess (nearly half as much more) of the rates and charges on coal over the defendants' line from Cumberland and the Georges Creek mines to Lynchburg. The complainant further states that the defendants' rate of charges on coal to North Garden, higher than to Lynchburg, is in violation of the 4th section of the Act to Regulate Commerce, is unjust and unreasonable in itself and relatively in comparison with the rate to Lynchburg, and subjects the complainant and other shippers of coal to North Garden and the locality of North Garden to undue and unreasonable prejudice and disadvantage.

The complainant states that he made three shipments, two to North Garden and one to Lynchburg, upon which he alleges the charges of defendants were unlawful, and prays that defendants be required to answer what is herein alleged against them; that after investigation they may be ordered to cease and desist from said violations of the Act to Regulate Commerce, and that they be further ordered to establish and maintain such rate of charges for the transportation of coal in carloads from Cumberland, to North Garden, as shall be deemed just, reasonable, and lawful; and complainant prays for such other or further order as may be shown to be reasonable in the premises.

The separate answer of the Baltimore & Ohio Railroad Company and John K. Cowen and Oscar G. Murray, Receivers, says that two shipments of coal were made by the Georges Creek Coal and Iron Company to North Garden, Va., in April, 1895 and February 14, 1896, respectively, on which the established rates at the time in force over the Baltimore & Ohio Railroad were demanded and received; that this company and its receivers have no knowledge of any shipments of coal being made by complainant to North Garden, and deny any being made by complainant over the Baltimore & Ohio Railroad to Lynchburg; that in April, 1895, the local rate of these defendants from Cumberland to Strasburg on coal in carloads was \$1.90 per ton of 2240 pounds.

That "at the time of the shipment of February 14, 1896, the Baltimore & Ohio Railroad Company had put into effect a rate of \$1.56 per ton to Strasburg Junction on all shipments of coal destined to points on the Southern Railway."

5. Further answering, these defendants state that for some time past there has been in effect no through tariff of rates on coal between the Baltimore & Ohio Railroad and the Southern Railway *via* Strasburg; that a rate of \$1.56 per long ton is charged from Cumberland to Strasburg, but these defendants give no rates to Southern Railway points or beyond Strasburg Junction.

6. These defendants deny that they have, or either of them has in the past violated any of the provisions of the Act to Regulate Commerce.

The Southern Railway Company, separately answering, says:

Respondent admits that it, and said Cowen and Murray as receivers of the Baltimore & Ohio Railroad Company, have been and are engaged in the transportation of coal, as a continuous shipment, and by continuous carriage over the line formed by the connection of their roads at Strasburg, Va., from Cumberland, Md., to North Garden and Lynchburg, Va.; that North Garden, Va., is on the main line of this respondent 49 miles north of Lynchburg, and is an intermediate point of shipment from Cumberland, Md., *via* Strasburg, to Lynchburg, Va.

. . . Respondent finds that shortly after April 24th, 1895, a carload of coal weighing 50,292 lbs. was delivered to it at Strasburg by said receiver of the Baltimore & Ohio Railroad Company, which was represented to this respondent as coming from Cumberland, Md., destined to North Garden, Va., on which car said receivers of the Baltimore & Ohio Railroad Company charged \$42.66 or \$1.90 per ton of 2240 lbs.; and the agent of this respondent at North Garden collected \$34.80 or \$1.55 per ton of 2240

lbs. when said agent should have collected \$1.74 per ton of 2240 lbs. from Strasburg to North Garden, which would have made the through rate \$3.64 per ton, instead of \$3.45 of 2240 lbs.

Shortly after February 15th, 1896, this respondent received from said receivers of the Baltimore & Ohio Railroad, a carload of coal represented to it as coming from Cumberland, Md., destined to North Garden, Va., weighing 55,440 lbs. on which said receivers of the Baltimore & Ohio Railroad charged \$38.61 or \$1.56 per ton of 2240 lbs., and this respondent collected \$42.97, or practically \$1.74 per ton of 2240 lbs.

Respondent avers that its agent at North Garden, Va., should have charged and collected a rate of \$3.30 for each and every ton of 2240 lbs. of said carload of coal received by respondent shortly after February 15th, 1896, as aforesaid, instead of \$3.29 as alleged in the petition. Said rate of \$3.30 per ton was made up as follows; *viz.*: The Baltimore & Ohio Railroad Company charged on said coal from Cumberland, Md., to Strasburg, \$1.56 per ton of 2240 lbs., and this respondent charged on said coal from Strasburg to North Garden \$1.74 per ton of 2240 lbs., making said rate of \$3.30 per ton of 2240 lbs.

Respondent avers that its rate of \$1.74 per ton of 2240 lbs. is equivalent to its local rate of \$1.55 per ton of 2000 lbs., and is but a just and reasonable charge for the service rendered.

Respondent has no knowledge of any through rate on coal from Cumberland, Md., to North Garden, Va., now in force, which is less than \$3.64 per ton of 2240 lbs. made up of \$1.90, the rate of the Baltimore & Ohio Railroad Company from Cumberland to Strasburg, and \$1.74, the rate of respondent from Strasburg to North Garden.

Respondent denies that the transportation of coal from Cumberland, Md., to North Garden, Va., is done under substantially similar circumstances and conditions as those attending the transportation of coal from Cumberland, Md., to Lynchburg, Va.

Respondent denies that it violates the provisions of the 4th section of the Act to Regulate Commerce, in charging a height rate on coal to North Garden, Va., the shorter distance, than or Lynchburg, Va., the longer distance, over the same line, in the same direction, the shorter being included within the longer.

Respondent admits that it has established and maintains a rate of \$2.50 per ton of 2240 lbs. on coal in carload lots, from Cumberland to Lynchburg, *via* Strasburg; . . . respondent avers that, as shown by tariff S. T. 1823 (on file in the office of the I. C. C.), effective December 18th, 1894, said rate is divided as follows to the Baltimore & Ohio Railroad Company \$1.45 and to this respondent \$1.05.

Respondent avers, and says that the rate of \$2.50 per ton of 2240 lbs. from Cumberland, Md., to Lynchburg, is made for the

purpose of meeting competition, of coal coming from the mines on the Chesapeake & Ohio Railroad and the Norfolk & Western Railroad, located within the State of Virginia.

Respondent is informed and believes, and so charges that, the rate on coal from Cumberland to Lynchburg, *via* the Baltimore & Ohio Railroad to Staunton, thence *via* the Chesapeake & Ohio Railroad to Lynchburg, is \$2.50 per ton of 2240.

Respondent avers and says that if it should insist upon the rate to Lynchburg being advanced above \$2.50 per ton of 2240 lbs. it would not secure the hauling of any coal from Cumberland to Lynchburg, nor would it be able to secure the hauling of bituminous coal from any other point to Lynchburg.

Respondent avers, and says that the rate of \$2.50 per ton of 2240 lbs. from Cumberland *via* Strasburg to Lynchburg, is made for the purpose of enabling that route to compete with the rates, made by the Baltimore & Ohio Railroad Company from Cumberland, *via* Staunton to Lynchburg, and with the rates from the mines on the Chesapeake & Ohio Railroad and the Norfolk & Western Railroad to Lynchburg.

Respondent avers that there is no such competition at North Garden as to require so low a rate as \$2.50 per ton of 2240 pounds.

Respondent denies that the rate of \$2.50 per ton of 2240 pounds from Cumberland to North Garden is unreasonable or unjust in itself, or relatively as compared with the established rate from Cumberland to Lynchburg; or that the rate to North Garden subjects the complainants, or other shippers, or consignees, or the town of North Garden, to undue or unreasonable discrimination; or that it makes, or gives, undue or unreasonable preference or advantage to the dealers in the city of Lynchburg, or to their traffic, or to the city of Lynchburg itself; or that the rate to North Garden complained of, is in violation of sections 1, 2 or 3 of the provisions of the Act to Regulate Commerce, or of any other provision of said Act.

On investigation it was ascertained and is so found that:

1. The Receivers who are defendants were, at the time complaint in this case was made against them, and are still operating and managing the road and property of the Baltimore & Ohio Railroad Company by appointment and under the direction of the United States Circuit Court for the Fourth Circuit. They were not in control of or operating and managing said road and property when the shipments to North Garden and Lynchburg, mentioned in the complaint, were made, and did not receive any part of the charges thereon.

The mileage operated, included the line from Baltimore through Harper's Ferry, West Virginia, and Cumberland to the Ohio

River and points beyond, is about 2,083 miles. One of the branch lines included extends from Harper's Ferry, W. Va., to Strasburg Junction, Va.; another from Washington Junction, Md., through Washington, D. C., to Relay Station, Md.; and another from Alexandria Junction, Md., to Shepherd, D. C., and thence by ferry across the Potomac River to Alexandria, Va.

The mileage of the Southern Railway Company is about 4,800 miles. Its main line runs from Washington, D. C., to Alexandria, Manassas, North Garden and Lynchburg, Va., thence and in connection with its branch lines to cities and points in most of the Southern States. One of its branch lines extends from Manassas to Strasburg, Strasburg Junction, and to Harrisonburg, Va.

2. The branch line of the Baltimore & Ohio Railroad from Harper's Ferry and the branch line of the Southern Railway Company from Manassas to Strasburg Junction connect there, and by this connection defendants form a line over which they transport coal and other traffic by continuous shipment and continuous carriage from Cumberland, Md., and other points on the line of said Baltimore & Ohio Railroad, by way of Strasburg Junction to Strasburg, Manassas, North Garden, Lynchburg and other points on the line of said Southern Railway Company. The distance over the line so formed (hereinafter designated the Strasburg Line) is from Cumberland, Md., to North Garden, Va., 303 miles, to Lynchburg 352 miles; the distance to North Garden, the shorter distance point, being 49 miles less than to Lynchburg.

The Georges Creek mines are in the Cumberland group or district, and on shipments from the mines of this district over the Strasburg line of defendants to Strasburg, North Garden, Lynchburg and other points in Virginia, the billing is from Cumberland at the Cumberland rate, the switching or transportation charge from the mines being included in this rate.

3. On April 24, 1895, the complainant, who is a coal merchant in Baltimore, bought at the Georges Creek mines 22.45 gross tons (50,292 pounds) of coal, and caused it to be shipped from these mines over the Strasburg line of defendants to the Albemarle Soapstone Company at North Garden, Va., the billing being from Cumberland. The rate collected by the delivering company on this shipment was \$3.45 per gross ton. Of this rate, \$1.90 per ton was apportioned to the Baltimore & Ohio Railroad Company,

which was at that time its local rate to Strasburg from Cumberland, and \$1.55 per ton to the Southern Railway Company, which was its local rate from Strasburg to North Garden per short ton of 2000 pounds. At this rate per short ton, the rate on the gross ton (2240 pounds) was \$1.74, and the aggregate of the local rates of said carriers to and from Strasburg was \$3.64, which the delivering company intended to collect.

When this shipment was made (April 24, 1895) to North Garden, the defendants the Baltimore & Ohio Railroad Company and Southern Railway Company were carrying, and claimed to have in force a joint tariff of rates and charges of \$2.50 per ton of 2,240 pounds for carrying, coal from Cumberland to Lynchburg through Strasburg and North Garden, but had not, and did not assume to have, established or published any through tariff of rates and charges from Cumberland to North Garden, nor had said defendant companies, or either of them, up to that time established and filed with the Commission any joint tariff of rates on coal from Cumberland to Lynchburg. They had separately issued so-called tariff or division sheets, each announcing a rate of \$2.50 per gross ton between these points. The division sheet or so-called tariff of the Baltimore & Ohio Railroad Company, issued February 3, 1891, apportioned \$1.56 of the rate to the Baltimore & Ohio and 94 cents to the Richmond & Danville Railroad Company, then operating that part of the defendant's Strasburg line now operated by the Southern Railway Company from Strasburg to Lynchburg. The division sheet was not filed with the Interstate Commerce Commission until said receivers filed it June 22, 1896, and was as follows:

BALTIMORE AND OHIO RAILROAD COMPANY.

General Freight Agent's Office.

No. G & S 280 of 1891. Baltimore, Md., Feby. 3rd, 1891.

Taking effect Feby. 3rd, 1891, the following rates will be charged from Cumberland, Md., Station. (C. & P. R. R.)

To Lynchburg, Va.

Coal, C. L., \$2.50 per 2240 lbs.

Divided:

B. & O. to Strasburg,	1.56
R. & D. R. R.,	.94
	<hr/>

(21023)

Above rates remain in force until changed.

When freight is way-billed at above rates, the number of this notice must always be quoted on way-bill as authority.

C. E. WAYS,

(Copy.)

General Freight Agent.

The division sheet or so-called joint tariff, issued and stated to be in effect December 18, 1894, by the Southern Railway Company, apportioned the through rate \$1.45 to the Baltimore & Ohio, \$1.05 to the Southern. This tariff or division sheet was not filed with the Commission, but was offered in evidence at the hearing March 26, 1897, and is as follows:

Form G. F. O.—58.

File S 614

Tariff No. S. T. 1838.

SOUTHERN RAILWAY COMPANY.

Eastern System.

General Freight Department.

Richmond, Va., Dec. 18th, 1894.

Via Strasburg.

In effect December 18th, 1894.

From		Coal, C. L., 24,000 pounds, Min.		
Georges Creek		Per ton, 2,240 pounds.		
and				
Cumberland Region.				
	To	B. & O. R. R.	Southern Ry.	Total.
Lynchburg, Va.	\$1.45	\$1.05	\$2.50
Danville, "	1.45	1.76	3.21
Greensboro, N. C.	1.45	2.69	4.14
Winston Salem, N. C.	1.45	2.69	4.14

Supersedes tariff No. S. T. 1788, Dec. 8th, '94.

J. M. C. 8

W. H. H.

G. S. H. 6

W. H. F.

—E. W.

O. F. P.

W. S. P. 4

G. G. T. 2

T. P.

J. E. M.

R. L. V.

C. B.

F. B. Price.

J. M. CULP,
T. M.

J. H. DRAKE,
G. F. A.

(Copy.)

The superseded tariff No. S. T. 1738, mentioned above has not been filed with this Commission.

4. On February 15, 1896, the complainant caused to be made a second carload shipment of coal over said Strasburg line from and to the same place and to the same company. The weight of this shipment was $24\frac{3}{4}$ gross tons (55,440 pounds). The rate charged and collected from complainant was \$3.30 per gross ton, and was apportioned \$1.56 per ton to the Baltimore & Ohio Railroad Company for the haul to Strasburg, and \$1.74 to the Southern Railway Company for the haul thence to North Garden.

At the time this second shipment to North Garden was made, February 15, 1896, the Baltimore & Ohio Railroad Company and Southern Railway Company, defendants, were offering to carry coal from Cumberland to Lynchburg at \$2.50 per ton, and were assuming to have in force, as at the time of the first shipment, a joint tariff establishing that rate by reason of the issuance of said division sheets or some similar sheets or reissues never filed with the Commission; but no joint tariff of rates to North Garden from Cumberland had been established, nor did the defendants assume the existence of any joint tariff to North Garden. Said receivers set out in their answer to the complaint that the Baltimore & Ohio Railroad Company had, between the dates of said two shipments to North Garden, "put into effect a rate of \$1.56 per ton to Strasburg Junction on all shipments of coal destined to points on the Southern Railway," but it is found that no tariff announcing such rate of \$1.56 to Strasburg Junction or Strasburg, on shipments for points beyond, was published and declared effective until December 16, 1896, by I. C. C. No. 738, and this was superseded by I. C. C. No. 926, effective February 19, 1897, which established a rate of \$1.50 per gross ton of coal from Cumberland to Strasburg Junction, which latter rate is still in force, though tariff I. C. C. No. 738 establishing a higher rate of \$1.56 was not formally canceled or withdrawn until September 20, 1897, up to the time of which formal withdrawal the \$1.56 charge was sometimes, if not in all cases, made.

At the time of said second shipment, coal destined to points including North Garden, on that part of the road of the Southern Railway Company, which is part of the Strasburg line, was received by this company at Strasburg and delivered at points of

destination at a rate made up of its own local rate from Strasburg and said \$1.56, the alleged rate of its codefendant to Strasburg. On this basis the rate to North Garden was \$3.30, the rate charged on that shipment; and while said Baltimore & Ohio Railroad Company charged this rate of \$1.56 on coal to Strasburg for delivery to points beyond, that company still maintained a rate of \$1.90 for the like service rendered in the transportation of coal from Cumberland to Strasburg proper, and not destined to points beyond.

On February 21, 1896, complainant caused a carload shipment of coal from the Georges Creek Mines (billed from Cumberland) to be made to Lynchburg over the Strasburg line. The weight of this carload was 15.82 gross tons (35,442 pounds) upon which the charges were \$2.50 per ton of 2240 pounds, or 80 cents per ton less than the rate at the time being charged on coal shipped to North Garden, 49 miles less distant than Lynchburg on and over the same line.

5. Before this proceeding was formally commenced, but after informal complaint had been made to the Commission that the transportation charges made as above were excessive and unlawful, and after the defendants had been advised by the Commission that such complaint had been made, they, the said receivers and the Southern Railway Company, issued, to become effective October 27th, 1896, a joint tariff (I. C. C. No. 577) of rates and charges on coal, by which they established a joint through rate from Cumberland "*via* Strasburg" over their Strasburg line to points thereon as follows:

Cumberland to	Miles.	Rate per ton of 2240 lbs.
Water Lick.....	157	\$2.12
Front Royal.....	163	2.01
Manassas.....	213	2.68
Orange.....	264	3.02
Rio.....	289	3.18
Charlottesville.....	292	2.50
Red Hill.....	300	3.24
North Garden.....	303	3.30
Covesville.....	308	3.30
Burfords.....	347	3.30
Lynchburg.....	352	2.50

This joint tariff, I. C. C. No. 577, superseded and in effect can-

celed the Cumberland-Lynchburg rate published in the joint tariff or division sheet of the Baltimore & Ohio Railroad Company, issued February 3, 1894, and in the Southern Railway Co. tariff No. S. T. 1823—both copied above, and all reissues thereof.

By joint tariff made effective December 1st, 1896 (I. C. C. No. 688), reading "*via* Strasburg Junction, Va.," the tariff effective October 27th, 1896 (I. C. C. No. 577), was canceled, but the rates in the foregoing table were re-established and remained practically the same.

By supplement No. 1 to I. C. C. No. 688, effective December 21st, 1896, said tariff No. 688 was withdrawn and canceled. Now the defendants maintain no joint tariff of rates on coal to points on the Strasburg line other than to Strasburg, and the through rate for continuous shipment and carriage from Cumberland to North Garden, Lynchburg and other points on this line is the amount or sums of the established local rates over the Baltimore & Ohio Railroad to Strasburg Junction and thence over the Southern Railway to place of destination.

6. The local rate of charges in force on coal from Cumberland, Md., to Strasburg Junction, Va., and other points named below on the Baltimore & Ohio Railroad, on December 30, 1897, and the changes made in these local rates since April, 1895, are shown in the following table:

From Cumberland, Md., to		Miles.	Rates per ton of 2,240 pounds.						
			Rates in effect April 15, 1895. (File No. 51).	April 1, 1896. (I. C. C. No. 89).	April 10, 1896. (I. C. C. No. 102).	July 6, 1896. (I. C. C. No. 282.)	Feby 19, 1897. (I. C. C. No. 926).		
Harpers Ferry, W. Va.,.....	97	\$1.65	\$1.50	\$1.50	\$1.45	\$1.45			
Strasburg Junction, Va.,.....	150	1.90	1.75	1.75	1.75	1.50			
Washington, D. C.,.....	153	1.80	1.65	1.65	1.65	1.50			
Shepherd, D. C.,.....	172	1.80	1.65	1.65	1.75	1.50			
Baltimore, Md.,.....	192	1.90	1.75	1.75	1.75	1.50			
From Cumberland, Md., to		Rates in effect April 1, 1896. (I. C. C. No. 86).	April 11, 1896. (I. C. C. No. 100).	Feb. 15-19, 1897. (I. C. C. Nos. 935-946).	Feby. 19, 1897. (I. C. C. No. 947).	April 4, 1896. (Sup. 1, I. C. C.) No. 89).	April 10, 1896. (Sup. 1, I. C. C. No. 102).	April 24, 1896. (I. C. C. No. 131).	Dec. 16, 1896. (I. C. C. No. 738.)
Baltimore, Md. For reshipment to points outside of Capes of Chesapeake Bay,....	\$1.28	\$1.28	\$.93						
Baltimore, Md. For reshipment to points inside of Capes of Chesapeake Bay,....	1.45	1.45							
Baltimore, Md., When used for manufacturing gas.					\$1.20				
Shepherd, D. C., For reshipment beyond,						\$2.50			
Strasburg Junction, Va., When destined to points beyond.							\$2.50		
Alexandria, Va., When destined to points beyond								\$.110	
								\$1.56 (Withdrawn Sept. 20, 1897)	
								1.60	

The rate from Cumberland to Strasburg proper, a distance of 152 miles, which was \$1.90 per gross ton when the first shipment was made in April, 1895, was, on April 1, 1896, reduced by said receivers to \$1.75, which was maintained by them in two subsequently issued tariffs until January 29, 1897, when the Southern Railway Company had come into control of the road or track from Strasburg to Strasburg Junction, and with said receivers put into effect to Strasburg the same rate of \$1.75, which they reduced February 9, 1897, to \$1.50, and on April 30, 1897, again restored to \$1.75, which remains the only established joint rate of the defendants from Cumberland to any point on the Strasburg line between Strasburg Junction and Lynchburg.

7. The local rates of the Southern Railway Company between Strasburg and places named below are now and have been for many years as follows:

Strasburg, Va., to	Miles.	Rate per ton of 2000 lbs.	Equivalent rate per ton of 2240 lbs.
Water Lick, Va.	5	.50	.56
Buckton, "	6	.60	.67
Front Royal, "	11	.70	.78
Manassas, "	61	1.00	1.12
Orange, "	112	1.30	1.46
Rio, "	137	1.40	1.57
Charlottesville, "	140	1.40	1.57
Red Hill, "	148	1.50	1.68
North Garden, "	151	1.55	1.74
Covesville, "	156	1.55	1.74
Burford, "	195	1.55	1.74
Lynchburg, "	200	1.55	1.74

The local rate of this company from Lynchburg to North Garden is \$1.12 per ton of 2240 lbs.

These local rates over the Southern Railway are established by a local distance tariff and are the same in both directions; and since January 29, 1897, when it came into control of the track or line between Strasburg and Strasburg Junction, its local rates have been and are as follows:

Strasburg Junction, Va., to	Miles.	Rate per ton of 2000 lbs.	Equivalent rate per ton of 2240 lbs.
Water Lick, Va.	7	.60	.67
Buckton, "	8	.60	.67
Front Royal, "	18	.70	.78
Manassas, "	63	1.00	1.12
Orange, "	114	1.80	1.46
Rio, "	139	1.40	1.57
Charlottesville, "	142	1.50	1.68
Red Hill, "	150	1.50	1.68
North Garden, "	153	1.55	1.74
Covesville, "	154	1.55	1.74
Burford's, "	197	1.55	1.74
Lynchburg, "	202	1.55	1.74

The local or mileage rates for like distances in Alabama and North Carolina are higher than the local rates over the Southern Railway between Strasburg Junction and North Garden, while in the State of Georgia they are lower.

8. For continuous shipment and carriage of coal from Cumberland over said Strasburg line, the through rate to points south of Strasburg is made up of the sums of defendant's respective local rates, and is shown in this table:

Cumberland, Md., to	Miles.	Rate per ton of 2240 lbs.
Water Lick, Va.	157	2.17
Front Royal, "	163	2.28
Manassas, "	213	2.62
Orange, "	264	2.96
Rio, "	289	3.07
Charlottesville, "	292	3.18
Red Hill, "	300	3.18
North Garden, "	303	3.24
Covesville, "	308	3.24
Burford's, "	347	3.24
Lynchburg, "	352	3.24

The Southern Railway Company, from time to time, publishes or keeps in its main office so-called rate or division sheets, in the nature of circulars of instruction to its agents, which it does not file with the Commission, purporting to name joint through rates from mines on the Baltimore & Ohio Railroad, *via* Strasburg

Junction, to certain Southern Railway stations, which rates had not been established and had not received the concurrence of the initial road. One of these sheets was declared to be effective October 16, 1895, another December 12, 1896, and another February 9, 1897; the last purports to name rates and divisions as in force under it from Cumberland as follows:

Cumberland to	Via Strasburg Junction.	
	Roads.	Rate.
Front Royal, Va.	B. & O.	1.56
	Southern.	.45
	Total.....	2.01
Orange, Va.	B. & O.	1.56
	Southern.	1.46
	Total.....	3.02
Riverton, Va.	B. & O.	1.56
	Southern.	.67
	Total.....	2.23

These rates and divisions alleged to be now in effect are apportioned \$1.56 per ton of the through rate to the receivers for the haul to Strasburg Junction. Their established rate is \$1.50 for the haul to that point.

9. Coal carried from Cumberland to Lynchburg comes in competition with coal carried over the Chesapeake & Ohio Railroad from the Kanawha, West Va., mines, an average distance of 245 miles, from which mines the rates at the times of hearing were \$2.25 per gross ton, and with coal from the Pocahontas mines, Virginia, on the Norfolk & Western Railroad, an average distance of 175 miles, at a rate of \$2.00 per gross ton. From the mines in the New River, West Va., district the rate is now \$2.00 to Lynchburg and \$1.70 to Charlottesville, Va.

The quantity of coal carried from Cumberland to Lynchburg at the rate of \$2.50 by the complainants was inconsiderable while that rate was maintained. The average distance from the Kanawha, West Virginia, coal mines over the Chesapeake & Ohio Railroad to Lynchburg, thence over the Southern Railroad to North Garden, is 295 miles. The rate to North Garden from

West Va. New River mines through Charlottesville, Va., is \$2.48 per ton.

10. In April, 1895, and February, 1896, when the transactions occurred which are the subject of complaint in this proceeding, and afterwards until March 1st, 1896, the Baltimore & Ohio Railroad Company operated the main line and branches of the Baltimore & Ohio Railroad system, including the entire line or road from Harper's Ferry to Lexington, Va., of which the road or track from Strasburg Junction to Strasburg was part. During all this time the Southern Railway Company operated the roads and branches of the Southern Railway system, including of its present Manassas and Harrisonburg line only that part from Manassas to Strasburg, which was then the northwestern terminus of the Southern Railway Company's branch line from Manassas. These companies had formed, and then operated, the Strasburg line; the Baltimore & Ohio Railroad Company the part north and the Southern Railway Company the part south of Strasburg, then the junction point.

On March 1st, 1896, the receivers, defendants herein, came into the control, management, and operation of the Baltimore & Ohio Railroad system, including the road from Cumberland through Harper's Ferry and Strasburg Junction to Strasburg, to Harrisonburg and Lexington (hereinafter designated the Cumberland and Lexington road); and on December 1st, 1896, the Southern Railway Company succeeded said receivers in the management and operation of so much of the road last above described, the Cumberland and Lexington road, as extends from Strasburg through Strasburg Junction to Harrisonburg. The part of the Strasburg line operated by the receivers from Cumberland was thus made to terminate at Strasburg Junction, where connection is made with the road of the Southern Railway Company in the formation of said Strasburg line.

After the receivers had lost and the Southern Railway Company had succeeded them in the control and management of the road between Strasburg and Harrisonburg, they, the defendants, established in connection with other carriers a joint tariff of rates and charges, effective May 10, 1897, from Cumberland to Strasburg and to points beyond Strasburg Junction on said Cumberland and Lexington road as follows:

From Cumberland to	Miles.	Joint Through Rates.
Strasburg, Va.	152	\$1.75
Ten's Brook, "	154	1.75
Edinburg, "	165	1.75
Harrisonburg, "	199	1.75
Mr. Sidney, "	214	1.75
Staunton, "	225	1.50
Spottswood, "	241	1.75
Lexington, "	261	1.50

The separate answer of the Southern Railway Company admits that it and said Cowen and Murray, as receivers of the Baltimore & Ohio Railroad Company, have been and are engaged in the transportation of coal, as a continuous shipment and by continuous carriage, over the line formed by the connection of their roads at Strasburg, Virginia, from Cumberland, Md., to North Garden and Lynchburg; and it is found that said defendants are still so engaged in the transportation as a continuous shipment and by continuous carriage, though the point of connection in forming said line is Strasburg Junction.

One of the matters complained of in this proceeding was the greater rate of charges in force from Cumberland for the shorter distance to North Garden than for the longer distance to Lynchburg, Va., which greater charge was alleged to be in conflict with the 4th section of the Act to Regulate Commerce. At the time of the investigation, hearing and trial this alleged conflict had been obviated, if not corrected, by the defendants. On December 21, 1896, after filing their respective answers to the complaint, they withdrew and discontinued the lower rate to Lynchburg, and were at the time of such investigation and trial charging, and since then have maintained, the same rate on coal from Cumberland to North Garden and to Lynchburg.

After this readjustment or equalization of the rates over the line of defendants to North Garden and Lynchburg on said 21st day of December, 1896, which prior to that date were 80 cents per ton less for the longer distance, the previous inequality and preference in rates in favor of Lynchburg no longer existed. This inequality and preference were complained of and alleged to subject the locality of North Garden, the complainant, and other shippers and receivers of coal at that place, to undue preju-

dice and disadvantage, in violation of the 3d section of said Act; and the discontinuance of the inequality and preference satisfied the complaint of undue and unreasonable prejudice as well as the alleged relative injustice resulting to North Garden shippers by reason of the lower rate to Lynchburg.

Still another cause of complaint was, and is, the alleged unreasonableness and injustice of the rate from Cumberland to North Garden, which was a trifle higher but at the time of the hearing was \$3.30, and has since been reduced to \$3.24 per gross ton. The rate to this place is now made as it was when this case was commenced, by a combination of the local rates of the defendants to and from their junction point, the division now being \$1.50 per ton to the receivers of the Baltimore & Ohio for the 152 miles haul from Cumberland to Strasburg Junction, and \$1.74 to the Southern Railway Company for the 151 miles thence to North Garden.

After the most diligent investigation we have obtained no more satisfactory or convincing testimony as to the reasonableness of the aggregate rate made up of these divisions than that afforded by a comparison of the charges over the line or lines operated by the defendants. In comparison with the mileage or local rates on lines operated by other carriers, the rate of defendants in dispute is higher than some and lower than others, dependent upon competition and other causes which determine the rate of charges at which such other carriers are enabled to secure traffic. In comparison with the rate of the defendant receivers to Shepherds and to Baltimore over the line operated by them separately, and in comparison with the rate of defendants over said Cumberland and Lexington road or line to Staunton and to Lexington, the rate of the defendants from Cumberland to North Garden is, and their respective divisions thereof are, excessive and, as we believe, should be reduced. No claim is made for reparation on account of excessive charges in the past, and the Commission is not authorized to fix a reduced or lower rate of charges which the carriers can be required to respect in the future, if the ascertained facts warranted a finding as to the extent of the reduction which should be made.

The complaint asks that the defendants be "ordered to establish and maintain such rate of charges for the transportation of

coal in carloads from Cumberland, Md., to North Garden, Va., as shall be deemed just, reasonable, and lawful." To be lawful the Act to Regulate Commerce declares: "All charges made for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, or for the receiving, delivering, storage, or handling of such property, shall be reasonable and just."

Still, as recently interpreted by the courts, said Act makes no provision under which the defendants or other carriers can be ordered or required to establish or maintain any rate of charges to or from any place other than such rate of charges as any such carrier may fix and establish for itself.

The complaint is dismissed without prejudice.

FULLER E. CALLOWAY

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY;
WESTERN RAILWAY OF ALABAMA; ATLANTA & WEST
POINT RAILROAD COMPANY.

Decided December 31, 1897.

1. It being settled that competition must be considered and may justify deviation from the rule of the fourth section, it follows that wherever competition of controlling force by existing lines is practicable it must be given effect; and that freely engaging in competition at one point, while wholly or largely suppressing it at a shorter distance locality, cannot entitle carriers to make higher charges for shorter than for longer hauls over the same line in the same direction.
2. The transportation of freights by defendants from New Orleans to La Grange and Fairburn, Ga., is "under substantially similar circumstances and conditions," the conditions and circumstances affecting transportation by them from New Orleans to La Grange and Hogansville, La Grange and Newnan, and La Grange and Palmetto, all in Georgia, are also substantially similar; and freight rates over defendants' line which are higher from New Orleans for the shorter distance to La Grange than for the longer distance to either Hogansville, Newnan, Palmetto, or Fairburn, violate section 4 of the statute.
3. Higher rates charged by defendants from New Orleans to La Grange than for longer distances from New Orleans to Hogansville, Newnan, Palmetto or Fairburn, on like traffic carried under similar conditions and circumstances, and at less cost for the transportation service to La Grange, are unreasonable and unjust to complainant, and subject him and other dealers at La Grange, their traffic, and, as a locality, the city of La Grange itself, to undue and unreasonable prejudice and disadvantage, and give undue preference and advantage to the localities of Hogansville, Newnan, Palmetto and Fairburn, traffic thereto, and dealers and merchants doing business therein, in violation of sections 1 and 8 of the act.
4. Freight carried by defendants from New Orleans to either Atlanta or La Grange, Ga., is through freight and entitled to through service, and the manner in which they conduct the service cannot alter the character of such freight so as to make that carried for La Grange partly local, while the freight to Atlanta is wholly through.

5. Defendants are engaged in carrying traffic over the short-line distance from New Orleans to Atlanta and intermediate points, including La Grange, Ga., 71 miles southwesterly of Atlanta. There are various competing lines between New Orleans and Atlanta, and there is possible railroad competition between New Orleans and La Grange. The relations of rates from New Orleans, New York, and other supply markets to Atlanta are, and for a long period have been, the subject of agreement or arbitration between the various lines. The rates from New Orleans to Atlanta are not unreasonably low. The rates from New Orleans to La Grange are made by combining the New Orleans-Atlanta rates with the local rates of the A. & W. P. road back from Atlanta to La Grange. Under these charges the competing Atlanta dealer can ship from New Orleans to Atlanta and then back to La Grange as cheaply as complainant can ship direct from New Orleans to La Grange, and complainant is unable to sell at points on the line between Atlanta and La Grange. The defendant roads are all solvent, and the delivering carrier for both Atlanta and La Grange earns 12 per cent annually for its stockholders. *Held*, Upon all the facts, that the rates from New Orleans to La Grange are unreasonable in themselves and relatively as compared with the rates to Atlanta, and that higher rates from New Orleans to La Grange than those charged from that city on like traffic to Atlanta are and would be unlawful.

Fuller E. Calloway for complainant.

Edward Baxter for defendants.

REPORT AND OPINION OF THE COMMISSION.

CLEMENTS, *Commissioner* :

The complaint alleges, in substance, that defendants are subject to the provisions of the Act to Regulate Commerce; that rates charged by them for the transportation by continuous carriage or shipment of freights, wholly by railroad, from New Orleans, La., to La Grange, Ga., are unjust and unreasonable in themselves, and relatively unjust and unreasonable as compared with lower rates charged by defendants for carrying the same commodities over longer distances from New Orleans through La Grange to Hogansville, Newnan, Palmetto and Fairburn, Ga., and other localities; that defendants' said rates from New Orleans to La Grange and said longer-distance points and other localities unjustly discriminate against complainant and others, the city of La Grange and vicinity and traffic carried thereto, and subject merchants and dealers therein to undue and unreasonable prejudice and disadvantage, and give undue and unreasonable

preference and advantage to merchants and dealers at Hogansville, Newnan, Palmetto, Fairburn, and other localities and traffic consigned thereto; that defendants' said rates from New Orleans to La Grange, Hogansville, Newnan, Palmetto and Fairburn give them greater aggregate compensation for the transportation of like kind of property, under substantially similar circumstances and conditions, for the shorter distance from New Orleans to La Grange than for the longer distance over the same line, in the same direction, from New Orleans to Hogansville, Newnan, Palmetto or Fairburn; that the rates charged by defendants as aforesaid are in violation of sections 1, 2, 3, and 4 of the Act to Regulate Commerce. The rates and distances involved are set forth in the complaint, and it is further alleged therein that the lowest rate charged by defendants from New Orleans to La Grange yields them over $1\frac{1}{2}$ cents per ton for each mile of haul, and that their highest rate between said points affords them nearly $6\frac{1}{2}$ cents revenue per ton per mile.

The defendants filed a joint answer in which they admit that the rates charged are substantially as alleged in the complaint; that their rates to La Grange amount for each mile to 1.36 cents per ton on the lowest class of freight (D), and to 6.71 cents per ton on the highest class (1), and that the rates for the shorter distance from New Orleans to La Grange are more than they charge for the longer distances in the same direction from New Orleans to Hogansville, Newnan, Palmetto, and Fairburn; but they deny that the transportation to La Grange, Hogansville, and the other points mentioned is conducted under substantially similar circumstances and conditions, and thereupon further deny that their said rates are in violation of section 4 of the statute. The defendants also deny the unreasonableness, injustice, wrongful discrimination, and undue and unreasonable prejudice and preference, advantage and disadvantage, alleged by complainant under the first, second, and third sections of the Act. The answer contains statements of rates from New Orleans to the points in question, and to and from Montgomery, Ala., and Atlanta, Ga., showing also that the through rates to La Grange, Hogansville, and the other points mentioned are made by combination of rates to Atlanta with local rates back over the same line to Fairburn, Palmetto, Newnan, Hogansville, and La Grange; and it is further

averred that the disparities in rates complained of are caused by a competitive situation at Atlanta which compels low rates to that point from New Orleans. The competitive circumstances and conditions at Atlanta are stated in the answer to be the competition of such supply markets as New Orleans, Baltimore, and other northeastern cities, Cincinnati, Louisville, and other Ohio River cities, and the competition of carriers from such markets to Atlanta, and to have resulted, after frequent and disastrous rate wars, in the establishment of certain relative rates from these various market cities to Atlanta, a disturbance of which would immediately lead to a repetition of such wars. Similar competitive conditions are claimed by the defendants to exist at Montgomery, Ala., through which freight passes over defendants' through line to La Grange and the other points mentioned or referred to in the complaint, and they further assert that the present relation of rates to Montgomery and Atlanta must also, under existing circumstances, be maintained. The following extract from the answer seems to succinctly set out the defendants' position in this case:

"The rates from Atlanta to those stations, respectively, La Grange, Hogansville, Newnan, Palmetto and Fairburn, are fixed by the Georgia Railroad Commission, and are just and reasonable. The rates from New Orleans to Atlanta are fixed by the competition between markets, and the competition between carriers, as explained above, and are just and reasonable. The rates charged by respondents are the sum of those rates, and therefore respondents' rates themselves are just and reasonable. The reason that Fairburn, Palmetto, Newnan and Hogansville have lower rates than La Grange is due alone to the fact that they are nearer to Atlanta, and not to any favoritism or discrimination on the part of respondents." Proposed findings of fact submitted by counsel for the carriers have been fully considered by the Commission.

The alleged violations of section 4, the long and short haul clause, are matters which seem to demand separate consideration in this case.

It is admitted by defendants that greater aggregate rates are charged by them for the carriage of freight from New Orleans to La Grange than they charge and collect on the same kind of

traffic for the longer distances over the same line in the same direction, from New Orleans to Hogansville, Newnan, Palmetto or Fairburn. They do not claim that their cost of transportation is less in carrying goods to these longer-distance points than it is when the like freight is transported to La Grange; they insist upon that defense only in respect of freight destined to Atlanta. We further find in the record that through rates to these points are made by combination of the joint rate to Atlanta and the local rate of the Atlanta & West Point Railroad Company back over the same line to destination; that these rates are fixed on classes 1 to 6 and A to H, and range from class 1, the highest, to class D, the lowest, as follows:

		FROM NEW ORLEANS					
To		Rates Per Hundred Pounds.					
La Grange,	Distance 425 miles,	Class 1,	\$1.43;	Class D,	29 cents.		
Hogansville,	" 438 "	" "	1.39;	" "	28½ "		
Newnan,	" 457 "	" "	1.38;	" "	27½ "		
Palmetto,	" 471 "	" "	1.27;	" "	26½ "		
Fairburn,	" 478 "	" "	1.25;	" "	26 "		

While these rates so made by combination are the same as defendants' rates for the greater distance and service to and back from Atlanta, the traffic for these points from New Orleans is not in fact carried to Atlanta and back again over the line to the point of destination, and no necessity for so doing is shown or suggested in this case. The freight is delivered at La Grange, Hogansville and the other points in the order of their situation from New Orleans; and freight from New Orleans to Hogansville, Newnan, Palmetto and Fairburn, carried over longer distances than such freight destined to La Grange, is transported at greater expense to the defendant carriers. The shipments are billed through and are continuous to each of these places, and the carriage is also substantially continuous, any handling or transfer of the freights at junction points being merely incidental to the through service according as defendants see fit to conduct it. The defendants have as great interest in carrying freight to La Grange as to Hogansville or Fairburn, greater in fact, if the rates are the same, for their expense of carriage is necessarily less. The local rates in either direction between points on the Atlanta & West Point Railroad are substantially in accordance with the

maximum distance rates allowed by the Georgia Railroad Commission, and local shipments from La Grange are as advantageous to that carrier as local shipments from Hogansville, Newnan, Palmetto or Fairburn. Rates as low from New Orleans to La Grange as defendants charge from New Orleans to any of these longer-distance points would benefit dealers at La Grange, and the interests of consumers in the section affected would be promoted rather than injured by the competitive advantages which would result to complainant and other merchants at La Grange. It also appears from uncontradicted testimony that complainant is engaged as a general merchant, both at wholesale and retail, at the city of La Grange, but that the rates enforced by defendants prevent him from supplying goods by wholesale northerly of La Grange, on or near defendants' line, without being subjected to the disadvantage resulting from much lower rates to the less favorably situated longer-distance stations of Hogansville, Newnan, Palmetto and Fairburn; and that a great portion of his wholesale trade is now confined, largely by reason of defendants' rates, to localities off the line of railway, which are reached by wagon from La Grange.

It remains to be determined under this branch of the case whether competition at Atlanta causes transportation of freight by the defendants from New Orleans to Hogansville, Newnan, Palmetto or Fairburn to be conducted under circumstances and conditions which are substantially dissimilar from those which affect the transportation of like traffic from New Orleans to La Grange. This includes both the competition of markets for supplying goods to Atlanta and the competition of carriers for the carriage of freights to that point from New Orleans and from western, northern and northeastern cities. The defendants say that the Atlanta business is not unprofitable under the rates in force, and they claim that all the rates from Atlanta to Fairburn are reasonable, including the rate on first-class freight, which amounts to 22 cents for 18 miles (equal to more than 24 cents a ton a mile). A profitable rate from New Orleans to Atlanta added to defendants' apparently ample local rate from Atlanta to Fairburn, and the aggregate applied as the rate on business direct between New Orleans and Fairburn, cannot be found to have been improperly forced down to a low standard at Fairburn

by the existence of competitive conditions at Atlanta, whatever such conditions may be.

Another fact requiring consideration is that La Grange is itself a competitive point whenever the railroad carriers to that city see fit to actively engage in competition. The Macon & Birmingham Railroad connects La Grange with Macon over a distance of 105 miles, and that road, in connection with the Southern Railway, can carry traffic over about the same distance between Atlanta and La Grange. The distance by the Atlanta & West Point Railroad from Atlanta to La Grange is only 71 miles. On traffic from the eastern cities Macon takes a slightly lower rate than Atlanta. The carriers to La Grange can at will show and claim the existence of strong market and carriers' competition at La Grange, as forcing rates thereto down to the Atlanta basis, or they can, as they do, subject that city to through rates which are merely combination of rates based on Atlanta or Macon. With a slight differential in favor of rail and water routes, all lines to Atlanta from the same points of shipment charge substantially the same rates, and the same is true as to Macon; and all lines to La Grange from the same point of shipment also charge substantially the same rates to that point. Some ten or twelve lines are stated in testimony to compete for business between New Orleans and Atlanta; but in point of fact only three roads take Atlanta traffic out of New Orleans, the Louisville & Nashville, Illinois Central, and New Orleans & Northeastern, and only four roads deliver such traffic in Atlanta, the Atlanta & West Point, the Southern, the Central of Georgia and Western & Atlantic, defendants' route being the shortest, 496 miles. The next shortest route to Atlanta in which none of the defendants participates is *via* the New Orleans and Northeastern and Southern Railways, 526 miles, and the next the Illinois Central & Southern, 647 miles. The longest line is *via* the Illinois Central, Nashville, Chattanooga & St. Louis and Western & Atlantic, 882 miles. The Central of Georgia can receive traffic for Atlanta at Montgomery from the Louisville & Nashville, one of these defendants, and by that route Atlanta is 644 miles from New Orleans. The three initial lines out of New Orleans manifestly are able to largely control the routing of traffic to Atlanta. With the two lines at La Grange, one to Atlanta and the other to Macon and Atlanta, it is quite

practicable to form a number of competing routes from New Orleans.

If competition is to be deemed a factor on account of which carriers may deviate from the rule of the fourth section, then wherever such competition of controlling force by existing lines is practicable it must be permitted to have full sway; it should not be practised to an extreme here and wholly or largely suppressed there. Competition is possible at La Grange whenever the carriers to that point see fit to engage in it, and the Atlanta competitive conditions do not make defendants' rates unduly low to Fairburn (the most favored longer-distance point complained about under the fourth section in this case); on the contrary, such rates appear to be unnecessarily high for the through service from New Orleans to that point.

Having fully considered all the evidence and material facts and given due weight to the competition of carriers and of markets for Atlanta trade, together with the fair interests of the defendant carriers, the interests of the communities involved, and those of the complainant and other dealers concerned (*The Import Rate Case* [*Texas & P. R. Co. v. Interstate Commerce Commission*], 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405; *The Troy, Ala., Case* [*Interstate Commerce Commission v. Alabama M. R. Co.*], 168 U. S. 144, 42 L. ed. —), we find and hold that transportation of freights by defendants from New Orleans to La Grange and the transportation of like freight from New Orleans to Fairburn are under substantially similar circumstances and conditions; and that the same is true as to such transportation by defendants to La Grange and Hogansville, La Grange and Newnan, and La Grange and Palmetto. So much of the complaint as charges violations of the fourth section must be and is sustained.

Such higher rates to La Grange than to Hogansville, Newnan, Palmetto and Fairburn, longer distances, on traffic carried under like conditions and circumstances, and at less cost for the transportation to La Grange, are also unreasonable and unjust to complainant and subject him and other dealers at La Grange, their traffic, and, as a locality, the city of La Grange itself, to undue and unreasonable prejudice and disadvantage, and give unlawful preference and advantage to the localities of Hogansville, Newnan, Palmetto and Fairburn, traffic thereto, and dealers and merchants doing business therein, in violation of sections 1 and 3 of the Act.

We have then remaining the questions whether the rates to La Grange are reasonable and just in themselves, and whether they are relatively so as compared with the rates charged by defendants to "other localities," which phrase "other localities" occurs in the complaint in that connection, was duly made the subject of answer by the defendants, and in their proof transportation and rates to Atlanta were specially compared with transportation and rates to La Grange; and whether the rates complained of are, as compared with those from New Orleans to Atlanta, in contravention of the third section or undue preference and prejudice clause of the law.

The findings of the Commission concerning these questions, in addition to the pertinent findings hereinbefore stated, are as follows:

1. The Atlanta & West Point R. R. Co., and the Western Railway of Alabama are different corporations, but their properties are operated together under a common management. The Atlanta & West Point extends from Atlanta to West Point, and the Western of Alabama from West Point through Montgomery to Selma, Ala. At Montgomery the Western of Alabama connects with the Louisville & Nashville, which extends from there to New Orleans. La Grange is 71 miles southwesterly of Atlanta on the Atlanta & West Point road, and West Point, the junction of that road and the Western of Alabama, is 87 miles from Atlanta. Opelika, on the Western of Alabama, is 109 miles from Atlanta and 38 miles from La Grange. Montgomery is 175 miles southwest of Atlanta and 320 miles from New Orleans. La Grange rates are, with a single exception (class H based on Montgomery), combinations of rates to and from Atlanta, and West Point rates appear to be largely based upon combinations of rates to and from Opelika. Montgomery, Opelika and Atlanta have joint through rates from practically all points; and those from New Orleans, New York, Boston, Philadelphia, Baltimore, Cincinnati, Louisville are, in every instance, less than can be made by the combination method. Traffic from New Orleans to Atlanta or La Grange is carried by defendants on through bills of lading issued to shippers. The entire charge is collected by one of the carriers, usually at the destination point, and is subsequently divided among the three carriers according to some agreed basis of division. Such traffic is shipped through and is taken by de-

2. La Grange is a city of 4,000 or 5,000 inhabitants, with thirty or forty business establishments. Complainant is the only merchant who has seriously attempted to engage in the wholesale trade at that point, and he has declared his intention to start a strictly wholesale business there, if the carriers shall reduce rates to La Grange so that he can compete for such business with dealers at Atlanta and other places in that section. Atlanta had a population of 64,000 in 1890, and this is estimated to have since increased to 100,000. It is served by competing through lines of transportation from all sections, and the various primary markets of the country are in competition for Atlanta trade. Such competition has been active for many years, and during that period the carriers have indulged in a number of rate wars whereby rates affected from points of shipment to Atlanta and other principal points in the South were, for the time being, made abnormally low. But the same general competitive situation with reference to rate changes from points of supply has also existed at La Grange, and changes in rate conditions at Atlanta have ordinarily worked similar changes in rates to La Grange. Thus, a first-class rate of \$1.43 on traffic from New Orleans to La Grange, made by adding the \$1.03 rate to Atlanta and the 40-cent local from Atlanta to La Grange, would be reduced to 80 cents, if, during a rate war, the first-class rate from New Orleans to Atlanta should be as low as 40 cents.

3. The normal, long-established relation of rates to Atlanta from New Orleans, New York, Boston, Philadelphia, Baltimore, Cincinnati, Louisville and St. Louis is indicated by the following statement of rates on first-class traffic:

	Per 100 lbs.	
New Orleans.....	\$1.03.	All Rail.
New York, Philadelphia and Boston.....	1.26.	" "
" " " "	1.14.	Sea and Rail,
Baltimore.....	1.19.	All Rail.
" " " "	1.07.	Sea and Rail.
Cincinnati.....	1.07.	All Rail.
Louisville.....	1.07.	" "

The rates from Philadelphia and Boston are the same as from New York. The rate to La Grange is the local from Atlanta, added to the rate to Atlanta, in each case. The relative rates to Atlanta have been the subject of arbitration and agreement between interested lines at different times during the past 12 or more years, and the above-indicated basis has been substantially returned to by the carriers upon cessation of the rate wars which have prevailed during that period. The all-rail rates from the east—New York, Philadelphia, Boston and Baltimore—to Atlanta are made with reference to rates in force *via* the sea and rail lines from those points to Atlanta. These rates from eastern cities by all rail and by the part rail and part water routes are fixed by agreement of the several lines and are published and filed in I. C. C. No. 400, "The Southern States Freight Association," Eastern Cities Freight Tariff No. 6, A. S. W., effective March 10, 1897, which bears the following descriptive title: "Rates of Freight from Eastern and Virginia Cities and Points in Virginia and North Carolina Named in Note 6, Page 3, to Southern Common Points in Association Territory." Such steamship lines as the Clyde, Merchants' & Miners' Transportation Co., New York & Texas and Ocean Steamship Co., and the Baltimore, Chesapeake & Richmond Steamboat Co. are named with the railway lines as parties to this tariff, and the tariff purports to be issued by the "Rate Committee of the Southern States Freight Association" and the commissioner and secretary of that association. Rates from Cincinnati and Louisville to Atlanta are the same on the numbered classes as rail and water rates from Baltimore, but considerably lower on lettered classes, and class rates from New Orleans to Atlanta are 4 cents less than from Cincinnati and Louisville. The general relation of rates to Montgomery, Ala., also established by general agreement among the lines interested, is indicated by first-class rates as follows:

New Orleans.....	89¢	per 100 lbs. (at time of hearing 94¢)....	All Rail.
New York and Boston..	126¢	"	All Rail.
	114¢	"	Sea and Rail.
Philadelphia.....	120¢	"	All Rail.
	108¢	"	Sea and Rail.
Baltimore	118¢	"	All Rail.
	106¢	"	Sea and Rail.
Cincinnati	108¢	"	All Rail.
Louisville	98¢	"	All Rail.

Opelika, Ala., takes substantially the Atlanta rates from New Orleans, New York, Philadelphia, Boston, Baltimore and Louisville, and \$1.17, first class (10 cents higher than to Atlanta), from Cincinnati.

Following are about the short-line distances from New York, Baltimore, Cincinnati, Louisville, and New Orleans to Atlanta:

New York to Atlanta.	All Rail.....	876 miles.
" " "	Sea and Rail <i>via</i> Savannah.....	978 "
" " "	Sea and Rail <i>via</i> Charleston.....	937 "
" " "	Sea and Rail <i>via</i> Norfolk.....	880 "
Baltimore to Atlanta.	All Rail.....	691 "
Cincinnati to Atlanta.	All Rail.....	476 "
Louisville to Atlanta.	All Rail.....	456 "
New Orleans to Atlanta.	All Rail.....	495 "

Defendants and carriers generally have in effect various special or commodity rates which are in the nature of exceptions to their class rates. Such rates are made with particular reference to the movement of commodities between points named in the commodity tariffs. Thus, sugar which, in barrels or hogsheads, is classified as 6th class by defendants and under which the rate from New Orleans to Atlanta would be 42 cents, is given a commodity rating of 18 cents in carloads and 21 cents in less than carloads between those points. These sugar rates are 10 cents per hundred less than those applying by sea and rail lines from northeastern cities and 7 cents lower than the sugar rates from Baltimore to Atlanta. On molasses, a commodity rate of 33 cents is in force from New York to Atlanta, sea and rail, while defendants have in effect from New Orleans to Atlanta a commodity rate of 25 cents per hundred. Over half the tonnage carried by the defendant through line from New Orleans to Atlanta for the year ended June 30, 1895, consisted of sugar and molasses, and these articles made up 30 out of a total of 100 tons carried by this line from New Orleans to La Grange during the same period; but while the rates for carloads are, respectively, 18 and 25 cents to Atlanta, they are 35 and 37 cents to La Grange, 71 miles less distance. Defendants' rates over the short-line distance from New Orleans to Atlanta are not shown to be unduly low by comparison thereof with the rates and distances over other lines from New Orleans or with the rates and distances over the various lines from said other markets to Atlanta.

4. Following is a table of distances and present class rates from New Orleans to Montgomery, Opelika, West Point, La Grange and Atlanta by defendants' line :

To	Distance Miles.	FROM NEW ORLEANS.													
		1	2	3	4	5	6	A	B	C	D	E	H	F	
Montgomery,	320	89	79	68	55	47	36	24	27	20	16	44	29	32	
Opelika,	387	103	88	77	64	52	42	24	33	26	22	46	51	44	
West Point,	409	131	114	101	84	69	55	37	47	35	30	64	61	61.5	
La Grange,	425	143	124	109	93	74	59	41	48	33.5	29	66	74	59	
Atlanta,	495	103	88	77	64	52	42	24	31	24	20	44	49	40	

It is set forth in defendants' joint answer that complainant has the option or choice of rates *via* Atlanta or Montgomery, and that if La Grange rates were not based on Atlanta, then a reasonable and just rate would be the combination of rates to and from Montgomery; and it is shown that the Montgomery combination would be, first class, 94 cents to Montgomery added to 75 cents, Montgomery to La Grange, a total of \$1.69. Under the present 89-cent rate to Montgomery from New Orleans, such combination rate would be \$1.64. The 75-cent rate so mentioned as in force from Montgomery to La Grange is itself a combination of rates from Montgomery to West Point and West Point to La Grange, namely, 55 cents, approved by the Alabama R. R. Commission for such local service over the 88 miles distance between Montgomery and West Point, and 20 cents approved by the Georgia Commission for local transportation over a distance of 16 miles from West Point to La Grange. West Point is on the boundary line between Alabama and Georgia. The through charge so claimed to be reasonable by defendants, in case a lower combination *via* Atlanta were not possible, is the sum of what would be charged for three distinct services performed by the defendant roads, respectively, on entirely separate shipments, that is to say, 89 cents for a local shipment over the Louisville & Nashville, New Orleans to Montgomery and delivery there to consignee; 55 cents for a second shipment and carriage *via* the Western of Alabama from Montgomery to West Point and delivery there to consignee; and 20 cents for a third shipment and transportation by the Atlanta & West Point from West Point to

La Grange and delivery there to consignee; all of which would amount to no more in the aggregate than the through charge for a single shipment and joint service from New Orleans to La Grange contended for as just and reasonable in case the Atlanta combination were higher.

Among tariffs on file with the Commission, remaining uncanceled and apparently in present effect, is a rate sheet of the Western of Alabama and Atlanta & West Point Railroads, effective October 20, 1889, showing class rates between Opelika, Ala., and local points on the Atlanta & West Point, including La Grange, which names a rate of 43 cents Opelika to La Grange, first class, and lower on other classes, and under which some freight at the rate from New Orleans to Opelika and the rate from Opelika to La Grange would go on such combination at a slightly less total rate than the combination *via* Atlanta. Under these rates and those to and from Atlanta, dealers at Atlanta and Opelika are upon nearly even terms in competing for wholesale trade in La Grange, and complainant at La Grange, 38 miles from Opelika and 71 miles from Atlanta, must pay as much for through service to La Grange as his competitors on either side pay for two distinct shipments, transportations and deliveries. The Atlanta dealer can, by reason of defendants' rates, sell New Orleans goods cheaper at Hogansville, 59 miles distant, than complainant can, though La Grange is only 13 miles from Hogansville, and the same is also true as to trade with Newnan, which is somewhat nearer to La Grange than to Atlanta. Complainant, as compared with his Atlanta competitor, is at a disadvantage in all the section to the north of La Grange, and in La Grange the Atlanta dealer can sell as cheaply as complainant can.

5. The first-class rate of \$1.03 to Atlanta affords the defendants a rate per ton of over 4.17 cents for every mile in a haul of 495 miles; and the lowest or class D rate of 20 cents, applied principally on carloads of grain, cotton seed, hay, meal and some other mill stuff, gives them $\frac{8}{10}$ of a cent per ton for each mile; and the next lowest class (C), rate 24 cents, yields them 9.7 mills a ton per mile. The rates are divided between the two managements (Atlanta & West Point and Western of Alabama are under a common management) on what appears to be a mileage basis, so that such figures are substantially the revenue per ton per mile for each.

The average revenue received on all traffic by all roads in the United States for the year ending June 30, 1895, was 8.39 mills per ton per mile; for all roads in Group V (Statistics of Railways), which includes these roads, the average rate per ton per mile in that year was 8.95 mills; such averages on all traffic for the three defendant roads were 1.726 cents for the Atlanta & West Point, 1.586 cents for the Western of Alabama, and 8.26 mills for the Louisville & Nashville line south of the Ohio River. Under present rates New Orleans to La Grange, the rates per ton per mile for the 425 miles are from 6.71 cents on first class to 1.36 cents per ton on class D.

The percentage of operating expenses to earnings from operation on all roads in the United States for the year to June 30, 1895, was 67.48 per cent; in Group V (including defendant roads) it was for that year 68.30 per cent; for the Atlanta & West Point it was 58.43 per cent; for the Western of Alabama it was 66.13 per cent; and for the Louisville & Nashville (line south of the Ohio River) 63.50 per cent. The rates per ton per mile afforded by the New Orleans traffic to Atlanta at present rates compare favorably with the average rates per ton per mile received by all roads in the United States and in the section of country through which these roads penetrate; and their percentage of operating expense to earnings is considerably less than such percentage reported for all United States roads or for all roads in their section of the country.

Each of the defendant roads is solvent. For the year ending June 30, 1895, the Louisville & Nashville, a large system, of which only a small part is involved in this case, paid interest on its large funded debt (over \$79,000,000) and discharged its other accruing liabilities. The Western of Alabama for that year paid interest on \$1,543,000 bonded debt and 2 per cent dividend on \$3,000,000 capital stock, and had a considerable surplus on hand. The Atlanta & West Point paid in that year 6 per cent dividend on \$1,232,200 capital stock and 6 per cent interest on the same amount of "certificates of indebtedness," and had a considerable sum remaining. This road has no bonded debt, and the above stated stock and certificates constitute its capitalization. Such capitalization, made up of equal amounts of stock and certificates, amounts to \$28,756.12 per mile based on a total of 85.7 miles.

The certificates of indebtedness are not secured by mortgage. The testimony of the President of the road is that it would cost at the present time to duplicate the Atlanta & West Point Railroad and the Western Railway of Alabama, including their terminals, from \$30,000 to \$35,000 per mile, and that this includes the enhanced value of property owned by the company due to the growth of cities and towns along the line. The same witness also testified, in answer to an inquiry propounded by complainant as to the certificates amounting to a doubling of the stock without cost to the stockholders, that the company had never kept an improvement account; that no capital stock has been issued during the many years in which the road has been improved, the old rails being removed and heavier rails substituted, the old equipment replaced with heavier cars and locomotives, and iron bridges constructed in place of wooden structures; that when the "debentures" (certificates of indebtedness) were issued the value of the property was much in excess of its original cost; that there was nothing surprising to his mind that the stockholders should have reimbursed themselves for the added value of the road, and that such appears to have been the manner of procedure; that the present capitalization of the road is not excessive as compared with other lines, it being only, in round figures, about \$28,000 per mile as compared with \$63,000 per mile for all the roads in the United States. Upon this statement, complainant suggested "that those improvements and those new rails, etc., have come out of the profits, which shows you are getting enough profit out of the rates to do that and pay 6 or 8 per cent interest." The witness answered: "The road has never exceeded the legal rates, and the added value is due to the economy, etc., in conducting the property, and it might properly be returned to the stockholders as representing that added value." By the report of the Atlanta & West Point Railroad Company for the year ending June 30, 1890, filed with this Commission as the law requires, and sworn to by its General Manager and by its Treasurer, it appears that these certificates of indebtedness to the full amount of \$1,232,200 were issued in 1881, and the Treasurer, replying to an official inquiry from the office of the Commission in reference to omissions and discrepancies in that report, said as to the certificates of indebtedness: "No security for this debt other

than that the first earnings of the road are set aside for the payment of interest on same. As to the inquiry why the debt is called certificate of indebtedness, I regret that I am not able to give the information. It was a dividend of 100 per cent on the capital stock of the road which was paid in this shape in 1881."

The actual paid in or working capital of the Atlanta & West Point road is therefore not in excess of \$1,232,200, or \$14,378.06 per mile, and on this the stockholders have been receiving a return of 12 per cent annually after paying all expenses of operation, repairs and improvements. They received such return in 1890, and for every year covered by annual reports to the Commission, including the year ended June 30, 1897. The Atlanta & West Point Railroad Company, as before found, is the delivering carrier for both La Grange and Atlanta, and it is its local rates back from Atlanta to La Grange which are added to the joint through rate over the three defendant roads from New Orleans to Atlanta to make through rates on freight carried only from New Orleans to La Grange.

6. For the year ended March 31, 1896, the tonnage to Atlanta, by all routes, from eastern and northeastern points, including the Atlantic Seaboard, was 170,365.26 tons, and by all routes from Ohio and Mississippi River points, and *via* Lexington, Ky., and from Nashville, Tenn., Johnsonville, Tenn., Florence, Sheffield and Riverton, Ala., it was 137,460.90 tons; and by all routes from New Orleans to Atlanta it was 11,113.20 tons. Total, 318,939.36 tons. This is stated to comprise practically all the tonnage destined to Atlanta in that year. The tonnage carried from New Orleans to Atlanta was only about 3½ per cent of such total tonnage.

TONNAGE CARRIED FROM AND *via* NEW ORLEANS TO ATLANTA.
YEAR ENDED MARCH 31, 1896.

Miscellaneous Merchandise	9,445	tons
Oats	1,002 85	"
Other Grain	25.65	"
Grain Products	20	"
Implements, Machinery, Furniture	17.45	"
Stoves, Special Iron Articles, etc.	1.85	"
Packing House Products .....	.10	"
Bridge and Railroad Iron, Stone, Brick, Cement, Salt, Fertilizers,	600.80	"
Total	11,113.20	tons.

Of this tonnage, the Louisville & Nashville R. R. Co., one of the defendants, carried 7,636.05 tons, or 68.71 per cent of the total,

and over 70 per cent of the miscellaneous merchandise, which constituted the great portion of the tonnage. The remaining tonnage was about equally divided between the Illinois Central and New Orleans & Northeastern routes, the first carrying 1,523 tons, the other, 1,954.15 tons. A very large portion, if not all, of the Atlanta business *via* the Louisville & Nashville from New Orleans undoubtedly came by the defendant through line. A "statement of tonnage by classes and commodities from New Orleans, La., to Atlanta, Ga., and local stations on the A. & W. P. R. R. and the W. Ry. of Ala. for year ending June 30, 1895," was put in evidence for the defense. This statement shows a total of 6,773 tons to Atlanta; 100 tons to La Grange; 46 tons to Hogansville; 52 tons to Grantville; 33 tons to Moreland; 188 tons to Newnan; 21 tons to Palmetto; 8 tons to Fairburn; and 2 tons to East Point. It was also testified by a witness for defendants that the revenue derived by the lines of the defendant companies on traffic from New Orleans to Atlanta and La Grange amounted, for the year ending June 30, 1895, to \$13,470.19 at Atlanta and \$262.70 at La Grange. At the tariff rates then in effect over this line from New Orleans to La Grange and Atlanta the revenue to both points on this business should have been much greater, or else the tonnage so stated was much less than was actually carried by those companies. As appears by the tonnage statement, 3,668 tons of sugar were carried from New Orleans to Atlanta in that year, and at the prevailing carload rate of 18 cents a hundred, or \$3.60 per ton, the aggregate revenue on this commodity alone would be \$13,204.80. Add to this 995 tons of molasses at \$5.00 a ton, amounting to \$4,975, and the revenue statement is exceeded by \$4,709.61, with 2,110 tons out of 6,773, the total Atlanta tonnage, to be accounted for. This 6,773 tons could not have been the total tonnage by all lines New Orleans to Atlanta, for the year ending nine months later shows a total tonnage by all such lines of 11,113 tons, and, besides, the statement was made up by the Auditor of the Atlanta & West Point and Western Railway of Alabama from waybills in his office. The same statement showing the movement of 100 tons New Orleans to La Grange in the year to June 30, 1895, sets forth that included in such movement were 17 tons of molasses, 13 tons of sugar, and 6 tons of 6th class freight, which at lowest prevail-

ing combinations on Atlanta appear to call for a total revenue of \$287.60; and this alone exceeds the stated total revenue on New Orleans freight of \$262.70, with 60 tons remaining to be accounted for. This testimony seems plainly contradictory.

The statement of tonnage by this line from New Orleans to Atlanta is not, however, greatly disproportionate to the figures of total tonnage by all lines between those points given in evidence by another witness for a year ending nine months later, and 6,773 tons carried between New Orleans and Atlanta for the year ending June 30, 1895, is taken as approximately correct. This was more than sixty times the tonnage carried over the same line for the same period between New Orleans and La Grange, and more than six times the amount of the tonnage from New Orleans freight to local points on the Western of Alabama and Atlanta & West Point for the same year. Yet the total tonnage from New Orleans to Atlanta and local intermediate points on the Atlanta & West Point was but an insignificant portion of the total tonnage transported by the Atlanta & West Point during the same time (year ending June 30, 1895). Such total freight tonnage was 214,905 tons, of which 153,246 tons (including this New Orleans traffic) was received "from connecting roads and other carriers."

7. As before found, the Louisville & Nashville, as an initial road out of New Orleans, carried for the year ending March 31, 1896, over 68 per cent of the tonnage from New Orleans to Atlanta, namely, 7,636 tons, and this was presumably nearly all routed over the three defendant roads. Such total tonnage for a year, composed of less than carload as well as carload shipments, amounted at the rate of 12 tons to a car to only about 565 full carloads, a little over $1\frac{1}{2}$ carloads per day. The engines hauling trains running from Montgomery to Atlanta haul an average of nearly 21 loaded cars, and their capacity is sufficient to haul 10 more. But it is testified that traffic from New Orleans to Atlanta usually moves in carloads, either as a full carload shipment or because there is daily a sufficient number of less than carload shipments from New Orleans to Atlanta to make up a carload, and that the Atlanta cars go through from New Orleans to Atlanta without break of bulk or transfer at Montgomery or other rehandling; that New Orleans freight destined to La

Grange is generally in less than carloads, and is transferred at Montgomery, being checked out from the car to the platform, and then put into a car to be hauled by the local freight train from Montgomery to La Grange, and that altogether it may be handled from five to a dozen times; that transporting New Orleans traffic to La Grange is done at three times the expense incurred by the carrier in moving New Orleans freight to Atlanta. That La Grange business compared with Atlanta business from New Orleans costs the carrier more to receive, transport and deliver, is asserted in testimony by defendants' witnesses, but such assertion is not supported by evidence concerning the essential details of management and necessary cost of service to the two points; and opposed to such assertion are a number of conditions and circumstances, including the fact that the distance to La Grange is only about five sixths of the distance to Atlanta, and that it ordinarily costs more to transport freight for each additional mile it is hauled.

The local train service on the Atlanta & West Point-Western of Alabama system is not maintained exclusively for freight from New Orleans to La Grange. Cars, engines, and crews engaged in hauling New Orleans freight from Montgomery to La Grange are also engaged in hauling such and other freight to other stations, in hauling freight between local stations, and in hauling freight shipped locally from Montgomery. Such local service is also employed in transporting freight from Atlanta to points on this system, and in doing generally the local business of the line. Neither do the tonnage figures shown for New Orleans-Atlanta business indicate that such traffic can furnish the delivering system, running from Montgomery to Atlanta, with a train load daily or on other than very exceptional occasions.

The defendants, instead of hauling La Grange freight through in the trains used for Atlanta traffic from Montgomery, prefer to carry such freight by local service from Montgomery, at which point new trains are made up for all traffic destined to points on the Atlanta & West Point-Western of Alabama system, and the rehandling of La Grange freight at Montgomery is incidental to the transportation methods of that system. By forwarding New Orleans-to-La Grange freight from Montgomery by the established local train service from Montgomery that system

avoids the expense of stopping the train carrying traffic destined to Atlanta and points beyond that city, and adds but little to the cost of the regular local service from Montgomery to La Grange and at other smaller stations on the delivering road. If the traffic from New Orleans to La Grange were greater in volume it might be more profitable for these defendants to forward such freight *via* the through Atlanta trains, thus using the engines on such trains more nearly to their maximum capacity, or else such greater volume of freight to La Grange would increase their local train freight and thereby decrease the percentage of expense to earnings on the local service. Carload shipments at New Orleans to either Atlanta or La Grange involve substantially as low necessary cost for billing, switching, hauling and delivery to La Grange as to Atlanta, and when La Grange carloads are hauled in trains from Montgomery different from those used for Atlanta freight, it is so done because the carriers prefer to conduct such transportation in connection with their established and otherwise required local service. Less than carload shipments at New Orleans for Atlanta or La Grange are alike separately billed to the shipper, waybilled by the carrier from New Orleans, and expense-billed to the consignee, and involve like expense to the carriers for handling, except as the Atlanta & West Point-Western of Alabama system prefers to rebill La Grange freight at Montgomery and transfer and forward the same by the different local train service. The service as rendered by the initial road, the Louisville & Nashville, from New Orleans to Montgomery seems to be practically the same whether the freight is destined to Atlanta or La Grange. The through freight from New Orleans and other points for Atlanta and points beyond and the local freight from Montgomery both pass through La Grange; these respective through and local services are attended with items of expense common to both, such as maintenance of way and structures, and general expenses; and many, if not all, items of cost which are peculiar to each necessarily apply to traffic in both directions—to all through and to all local traffic. The purely local train service from Montgomery may or may not be more expensive than the through service, but if it is, the transportation of freight from New Orleans to La Grange is actually part of the through traffic, and carrying it from Montgomery to La Grange by local

trains must tend to increase instead of diminish the net earnings of the delivering system from its local service. Under present rates in force to La Grange as compared with rates to Atlanta, the volume of traffic from New Orleans or other points to La Grange which defendants may carry cannot, in the nature of things, greatly increase, and the natural expansion of complainant's trade, particularly the wholesale part of it, is hampered, if not altogether prevented, by such related charges.

8. It is claimed for the defense that giving Atlanta and other so-called competitive point rates to La Grange would result in yearly loss of \$5,723.28 in La Grange station earnings, and that raising rates to and from such competitive points so that they shall not be less than those in force to or from places through which the traffic passes would result in loss to those carriers of \$133,596.24. These figures are based upon estimates of traffic at La Grange for a year and a complete loss of traffic at competitive points. Like assertion is made that if rates at all local stations on the line were adjusted so as not to exceed rates to and from competitive points the result would be a loss of \$63,331.56. The items on which these calculations were based are not in evidence, the losses so stated are necessarily estimated and assumed, and, besides, they embrace traffic and circumstances which do not relate to traffic and transportation from New Orleans to La Grange and Atlanta and which are not within the scope of this proceeding. If the figures in testimony relating to revenue from New Orleans traffic to Atlanta and La Grange are correct, defendants would, by increasing rates to Atlanta to the present La Grange rates from New Orleans, without the concurrent action of competing lines to Atlanta, lose \$13,470.19, more or less, in a given year, for shippers would doubtless choose the cheaper routes. On the other hand, if defendants should reduce New Orleans-La Grange rates to the New Orleans-Atlanta rates, they would by such action only lose the difference between the present Atlanta and La Grange rates, and the total earnings on freight from New Orleans to La Grange are stated in testimony to have been only \$262.70. These figures are based on testified earnings during the year to June 30, 1895. Fifty per cent of such total earnings, equal to \$131.25, is an excessive estimate of what defendants would lose if La Grange should be given Atlanta rates from New

Orleans and the tonnage were not increased thereby. This might be increased somewhat through any necessary readjustment of present rates at a few points south of La Grange. The rates which defendants now charge from New Orleans to Atlanta constitute, as a whole, sufficiently liberal compensation for the service, and to say that reducing their rates from New Orleans to La Grange to the Atlanta basis will result in any loss to them whatever can only be founded on assumption; but if any immediate resulting loss of net revenue can be demonstrated, any statement that such loss would be continuing is necessarily based upon opinion, and not on fact. On the contrary, the lower rates from New Orleans to Atlanta with present adjusted charges from other sources have played an important part in the development of that city, including railway traffic thereto and therefrom; and that like rates from New Orleans to La Grange would prove a potent factor in increasing the now insignificant tonnage from New Orleans to La Grange, or, indirectly, from other sources, is largely indicated, if not fully shown, by the effect of lower relative rates at Atlanta and other rate-favored points in Georgia and Alabama.

9. Under defendants' higher rates from New Orleans to La Grange than to Atlanta, the city of La Grange, complainant, and other dealers at that point, are deprived of the natural advantages resulting from their nearer location to New Orleans on defendants' line, and they and all descriptions of traffic from New Orleans to La Grange are subjected to undue prejudice and unreasonable disadvantage in favor of Atlanta, merchants and dealers therein, and New Orleans traffic thereto. Defendants' rates from New Orleans to La Grange as hereinabove set forth are unjust and unreasonable in themselves and as compared with their rates on like traffic from New Orleans to Atlanta. That part of defendants' rates from New Orleans to La Grange which consists of the local charge of the Atlanta & West Point back from Atlanta to La Grange is unreasonable and unjust and unduly prejudicial to complainant and others doing business at La Grange. Freight rates charged by defendants from New Orleans to La Grange, in so far as they have been or are higher than rates charged by them on like traffic from New Orleans to Atlanta, were when the complaint was filed, have been since, and are now unreasonable, unjust, wrongfully discriminating, and unduly

prejudicial to complainant and other dealers at La Grange, and any such higher rates to La Grange would be so unreasonable, unjust, discriminating and prejudicial.

CONCLUSIONS.

We are not able to find justification for the rates in question in the record of this case. Market competition, the strife between New York, Baltimore, Cincinnati, New Orleans and other cities for the sale of goods exists in respect to La Grange as well as to Atlanta. Those supply markets send more goods to Atlanta, but they can have little, if any, preference whether the commodities they sell go to Atlanta or La Grange. With even transportation charges to both places, dealers therein would have equal advantage in the various purchasing markets. The defendants and other carriers from the respective market cities are in direct control of the rates to Atlanta and La Grange, and they have adjusted rates from all sources of supply to both points which are higher to La Grange by the amount of the local rate from Atlanta, though La Grange is nearer than Atlanta to New Orleans. Defendants' rates from New Orleans to Atlanta are neither unprofitable nor unduly low. In fact, defendants themselves say in their joint answer that their rates from New Orleans to Atlanta are "just and reasonable." Moreover, the relation of rates from the various market cities (including New Orleans) to Atlanta have been established through various conferences and arbitrations, and have been in effect for a considerable number of years, and it must be assumed that the interests of these defendants are reasonably protected in rates so determined. The claim of defendants that their rates to Atlanta and their rates from Atlanta to La Grange added together make just and reasonable through rates from New Orleans to La Grange, would have to be fully proven, even if La Grange were situated beyond Atlanta and more distant from New Orleans. The location of La Grange on this short line, 71 miles southwesterly of Atlanta, and that much nearer to New Orleans, makes defendants' claim that a combination of rates based on those to and back from Atlanta is just and reasonable for La Grange seem almost absurd.

The carriers' attempt to justify such combined rates for La Grange by testimony declaring that it costs three times more to carry New Orleans traffic to La Grange than to transport such freight to Atlanta, and by estimates of how much revenue would be lost to them if so-called competitive rates were raised to local point charges, or if La Grange and other points were given competitive point rates. Neither of these assertions is supported by the weight of evidence.

In the matter of cost, defendants sought to burden this through traffic from New Orleans to La Grange with the cost of local service from Montgomery to La Grange and that of the transfer required to put it on local trains at Montgomery. The evident fact is that adding the present insignificant La Grange freight to the otherwise required local train service from Montgomery can add but little to the cost of such service. On the other hand, it does relieve them from stopping through trains carrying traffic destined to Atlanta and various points beyond to which traffic is shipped from New Orleans and all other points *via* Montgomery over this part of defendants' through line. It may possibly be less expensive for the Atlanta & West Point—Western of Alabama system to carry its relatively small New Orleans—Atlanta traffic by its through freight trains from Montgomery to Atlanta, averaging about twenty cars to the train. It is probably true that this carrier can most cheaply transport the present through tonnage from New Orleans to La Grange, amounting to only 100 tons for a given year, by its separate local train from Montgomery to La Grange and other local stations. But elements of cost applying to other freight service are present to such degree in either case that the most expert railway accountant cannot say which rightfully involves the greater expense. New Orleans freight to either La Grange or Atlanta is through freight and entitled to through service, and the manner in which the carriers conduct such service cannot alter the character of such freight, so as to make the one partly local and the other wholly through.

Whether defendants would or would not lose any of their present revenue if New Orleans—La Grange rates were reduced to the Atlanta basis is altogether a speculative question. If the tonnage to La Grange from New Orleans should not be increased thereby they would lose a trifling sum in a year; but

complainant insists that with Atlanta rates in force from New Orleans to La Grange he would be able to greatly increase his business and therefore his tonnage over this line, and the probabilities all favor the belief that such lower rates would increase business at La Grange and consequently the volume of traffic over defendants' line from New Orleans to La Grange. However this may be, if any of their profits result from wrongful practices against La Grange or its merchants, including complainant, they must be regarded as illegally extorted.

Apart from the high rates per ton per mile afforded by defendants' La Grange rates, which we find excessive for so long a haul as 425 miles, is the condemning fact that defendants carry for the Atlanta merchant New Orleans freight through La Grange to Atlanta and deliver it there to the consignee, receive it again as a new and purely local shipment, carry it 71 miles back to La Grange, and deliver it there to the second consignee for exactly the same aggregate compensation that they exact as one charge on a single through shipment from New Orleans to La Grange. The rates from Atlanta to La Grange are established for purely local service, and to add that local rate to the Atlanta rate to make the rate to an intermediate station, which should ordinarily take less than the Atlanta rate, is wholly indefensible. If defendants obtain the concededly profitable Atlanta rate for 71 miles less service to La Grange, they are obtaining all that they can reasonably or justly demand. As observed by Judges Pardee and Speer in *Augusta S. R. Co. v. Wrightsville & T. R. Co.* 74 Fed. Rep. 522, "No fair or equitable construction will justify the exaction of local rates for freights not local." That was a case of discrimination between connecting railway lines, while this is one of unreasonable rates and discrimination against one city in favor of another. It is a case where, on a delivering road paying an annual return of 12 per cent to its stockholders, it is contended that rates from a market city to a competitive point on that road, agreed to by all competing carriers, long enforced, and shown to be profitable, are not sufficient compensation for carrying from the same market to a much less distant point on that road; and that the local rates back from the competitive point must be added thereto in order to arrive at a proper charge for transportation to the intermediate locality.

In conclusion, it is again observed that the defendants charge on New Orleans traffic more for the shorter distance to La Grange than for the longer distance over the same line to either Hogansville, Newnan, Palmetto, or Fairburn, which points are not served by other carriers, or else, as at La Grange, competition is not permitted by the carriers to affect rates. This results in relatively unreasonable and unduly preferential rates whereby the natural advantage of location possessed by La Grange is overcome and complainant and other dealers in that city are subjected to palpable disadvantage. These rates also violate the long and short haul clause of the law. At La Grange the transportation conditions and circumstances are substantially the same as those prevailing at either Hogansville, Newnan, Palmetto, or Fairburn. These places are nearer to Atlanta, while La Grange is the same distance nearer to New Orleans, where the traffic originates. Under the most liberal construction of the fourth section, the higher rates for the shorter distance to La Grange cannot be justified.

But while, under the allegations of the complaint and upon the evidence, it appears that the higher rates to La Grange than to Fairburn and the other longer-distance stations mentioned violate the fourth, third and first sections, the case reaches farther on to the reasonableness of the La Grange rates in themselves and their justice as compared with defendants' rates to Atlanta. In this branch of the case the fourth section is not invoked. The questions of fact and law there involved arise only under sections one and three, and as above found and held those sections are violated by the rates in question.

Upon the evidence and findings, the complaint is held fully sustained, and suitable order will be entered requiring the carriers to cease and desist from the unreasonableness, injustice, wrongful prejudice, undue disadvantage, and greater charges for shorter than for longer distances, hereinbefore found and set forth in this report.

SAVANNAH BUREAU OF FREIGHT & TRANSPORTATION *et al.*,*v.*CHARLESTON & SAVANNAH RAILWAY COMPANY
et al.

Decided December 31, 1897.

1. Wrongs caused by improperly adjusted rates over independent lines from competing cities to a common destination cannot be corrected without authority to prescribe both the maximum and the minimum rate, and the Commission is not empowered to do either.
2. The "Plant System" of railways carries fertilizer from Savannah, Ga., to Valdosta, and also over the longer distance from Charleston to Valdosta, at no higher rate than it charges from Savannah. The Charleston rate is fixed by the competition of another and more circuitous line from that city to Valdosta, and the Plant System must meet that rate or get no fertilizer business from Charleston. *Held*, That under such circumstances the Plant system may properly make the same rate from Charleston as is made by the longer line, and in so doing it does not unjustly discriminate against Savannah, though if the rate from Charleston to Valdosta were in any way subject to control, the conclusion might be otherwise.
3. Water competition between Charleston and Savannah compels a rate of 80 cents per ton on fertilizer carried by rail between those cities. Rates from Savannah to points in Georgia are fixed by the Georgia Railroad Commission. Water competition exists also between Savannah and Charleston and Jacksonville, Fla. By that mode of carriage the rate from both cities to Jacksonville is the same, and consequently the same also to points reached by rail from Jacksonville, as against the all-rail lines to those points. Circumstances over which a defendant all-rail line to Montgomery and other points in Alabama has no control also affect fertilizer rates from Savannah and Charleston to such Alabama points in some degree. *Held*, Upon all the facts, (1) That defendants' present differential of 50 cents more per ton from Charleston than from Savannah to points in Georgia other than common points is not unreasonable or prejudicial to Savannah. (2) That charging the same rate from Savannah and Charleston over the defendant all-rail lines to points in Florida in competition with ocean and rail competition from Savannah and Charleston is not unlawful. (3) That a lower differential as between Savannah and Charleston on fertilizer to points in Alabama reached by the Alabama Midland Railway than the differential

established as between those cities on fertilizer to points in Georgia does not appear justified, and that sufficient difference is not made in rates to some stations in Florida; and defendants are advised to adjust such rates in accordance with suggestions stated, with leave to complainants to apply for an order if such adjustment is not made.

4. Higher rates charged by defendants on fertilizer from Charleston or Savannah to intermediate points between those cities than they charge over the entire distance between Charleston and Savannah are justified by the existence of water competition.
5. The circumstances and conditions governing the transportation of fertilizer from Charleston to Valdosta and various other stations are rendered substantially dissimilar from those applying in the transportation of fertilizer from Charleston over the same line to shorter-distance localities by railway competition at Valdosta and said other stations, which controls and affects the rate, and higher charges on fertilizer to such shorter-distance points are not in violation of the fourth section as interpreted by the United States Supreme Court in *Interstate Commerce Commission v. Alabama M. R. Co.* 168 U. S. 144, 42 L. ed.—.

W. W. Gordon for complainants.

Edward Baxter and others for defendants.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

The Savannah Bureau of Freight and Transportation is an organization of the business men of Savannah, Ga., having in charge the transportation interests of that city. Certain fertilizer companies located at Savannah join with it in this complaint.

Savannah, Ga., Charleston, S. C., and Wilmington, N. C., are important centers for the distribution of commercial fertilizers. This complaint refers to the rates upon such commodities from these three cities to points in North Carolina, South Carolina, Georgia, Florida, and Alabama, and is in substance that the system by which these rates are made is vicious in principle, and that the rates, as made under that system, discriminate against Savannah in favor of Charleston and Wilmington, and are in violation of the fourth section. The facts are not for the most part in dispute, since they arise mainly upon the published tariffs of the defendants.

While it will be unnecessary to refer to all the instances cited in the pleadings and proofs, two or three cases will best state the nature of the complainants' contention. The rates given are,

unless otherwise specified, those in force at the time the complaint and answers were filed.

The Charleston & Savannah Railway extends from Charleston to Savannah. At Savannah, it connects with the Savannah, Florida & Western Railway, which runs southerly to Jacksonville, Fla., and westerly across the southern portion of Georgia, to the Alabama State line, where it connects with the Alabama Midland Railway extending to Montgomery. These three lines of railway are operated under a common management by what is known as the Plant System, and constitute in practical operation but one line of railroad.

The distance between Charleston and Savannah by this line is 115 miles. Monteith, Ga., is a station upon the Charleston & Savannah Railway, 101 miles from Charleston. Burroughs, McIntosh, Blackshear and Sparks are all stations in the State of Georgia upon the Savannah, Florida & Western Railway. The rate per ton of 2,000 pounds and distance from Savannah to these stations is as follows:

To	RATE.	DISTANCE.
Burroughs,	\$.88	12 miles.
McIntosh,	1.10	31 "
Blackshear,	1.71	87 "
Waycross,	1.82	97 "

The rate and distance from Charleston to these various points is as follows:

To	RATE.	DISTANCE.
Monteith,	\$1.74	101 miles.
Savannah, .....	.80	115 "
Burroughs,	1.38	127 "
McIntosh,	1.60	146 "
Blackshear,	1.71	202 "
Waycross,	1.82	212 "

The complainants urge that a comparison of the rates and distances from Charleston and Savannah to those various points shows that the rates are made without any reference to distance or cost of transportation, and that they discriminate against Savannah.

The defendants insist, upon the other hand, that the rate from Charleston to Savannah is fixed by water competition, that the

rates from Savannah to all points upon the Plant System in Georgia are made by the Georgia Railroad Commission, that the rates from Charleston to these same points are made by adding 50 cents to the Georgia Commission rate, and that this difference, in view of the low rate between Charleston and Savannah, is a reasonable one.

The rates between all points in the State of Georgia are fixed by the Railway Commission of that State. The facts as to water competition between Charleston and Savannah are stated upon another branch of this case.

As already stated, the Savannah, Florida & Western Railway extends from Savannah, Ga., to Jacksonville, Fla. The difference in rate between Charleston and Savannah to all points upon the line of that railway in the State of Georgia, not common points, is 50 cents in favor of Savannah. Folkston, Ga., is the last station in that State and is distant 245 miles from Charleston and 130 miles from Savannah, and the rate is \$2.20 from Savannah and \$2.70 from Charleston. Boulogne, Fla., is the next station beyond and 5 miles distant from Folkston. At Boulogne the difference in rate is but 24 cents per ton in favor of Savannah, while at Dinsmore, Fla., 30 miles south of Folkston, the rate is the same from both Charleston and Savannah, *viz.*, \$2.30 per ton.

Complainants say that if Savannah is entitled to an advantage of 50 cents in Georgia it is certainly entitled to the same advantage in Florida, and that the shrinkage in all instances, and the entire disappearance in many instances of any difference, is an unjust discrimination against Savannah in favor of its competitor Charleston. The defendant excuses this by saying that Jacksonville is an important ocean port, between which and Charleston and Savannah the rate is practically the same, and that in going south upon the Savannah, Florida & Western Railway it is necessary to lower the rate and diminish the difference as Jacksonville is approached. Since the water rate is the same from both Charleston and Savannah to Jacksonville the rail rate must also be the same, or substantially the same, to points which can be reached from Jacksonville.

We find that there is actual water competition between Charleston and Savannah and Jacksonville, and that the rates by water from Charleston and Savannah to Jacksonville upon commercial

fertilizers are substantially the same. It did not appear how far from Jacksonville into the interior freight could be transported upon the ocean and rail rate as against all rail competition from Savannah. The rates to Florida points have been changed since the filing of the complaint, so that this alleged discrimination is to some extent removed.

The Savannah, Florida & Western Railway crosses the Chattahoochee River at Saffold, Ga., where it connects with the Alabama Midland Railway. Saffold is the last station in the State of Georgia. Alaga, 1 mile beyond, is the first station in the State of Alabama. The rate from Charleston *via* Savannah to Saffold, distant 384 miles, is \$3.64; from Savannah to Saffold, distant 269 miles, \$3.14, while the rate to Alaga from both Charleston and Savannah is the same, \$3.25. This is true of all the stations upon the Alabama Midland Railway, the rate being the same from both Charleston and Savannah. These rates seem to have been changed also since the filing of the complaint, so that there is now a differential of 20 cents in favor of Savannah to points on the Alabama Midland in Alabama.

The complainants insist that this equalizing of the rate between Charleston and Savannah to points in Alabama, while the difference in distance remains the same, is an unjust discrimination against Savannah. The defendants reply that all stations upon the Alabama Midland Railway between Alaga and Montgomery are grouped, and that the rate is made by competition with other railway lines and other lines partly rail and partly water, operating through Montgomery; the rate from Pensacola, Fla., and Mobile, Ala., to Montgomery being \$1.80, and from New Orleans, La., to Montgomery \$3.00. These rates are correctly stated, but nothing appears as to the cost of fertilizers at Pensacola, Mobile or New Orleans; nor did it appear whether or not fertilizers were actually brought from these points to Montgomery.

The foregoing illustrations sufficiently indicate the manner in which it is alleged that the Plant System discriminates by these rates against the city of Savannah in favor of Charleston; but the complaint goes much further than this and attacks, not merely the rate of individual lines, but the entire scheme of rate-making which, it is alleged, abolishes distance in favor of Charleston and Wilmington as against Savannah. The nature of this alleged discrimination appears from the following examples:

Valdosta, Ga., is situated upon the Savannah, Florida & Western Railway 158 miles from Savannah and 273 miles from Charleston, and this is the direct rail line between Charleston and Valdosta. Valdosta can, however, be reached from Charleston by another line made up of the South Carolina and Georgia Railway to Augusta, the Georgia Railroad from Augusta to Macon, and the Georgia Southern & Florida Railway from Macon to Valdosta. The distance by this route is 413 miles as against 273 miles by the direct route. It has already been said that to most points in the State of Georgia upon the Plant System there exists a difference in rate of 50 cents between Charleston and Savannah in favor of Savannah, but in the case of Valdosta the rate is the same, \$2.48, and this is for the reason that the circuitous line from Charleston demands and obtains the right to make the same rate from Charleston to Valdosta as is made from Savannah to Valdosta.

Hawkinsville, Ga., is upon the Southern Railway between Brunswick, Ga., and Macon. It is also connected by lines of railway with both Charleston and Savannah. The route from Charleston is over the South Carolina & Georgia to Augusta, the Augusta Southern to Tennille, the Wrightsville & Tennille to Dublin, and the Oconee & Western from Dublin to Hawkinsville, a distance of 297 miles. The line between Savannah and Hawkinsville is by the Central of Georgia Railway to Tennille, the Wrightsville & Tennille to Dublin, and the Oconee & Western from Dublin to Hawkinsville, being the same route from Tennille. The rate from all three points is the same, although the distances are from Brunswick 160 miles, Savannah 211 miles, and Charleston 297 miles.

The complainants have referred to several instances as showing this kind of discrimination in favor especially of Charleston and Wilmington as appears from the following tables. By "one line" is meant one continuous line operated by one company, and by "two or more lines," that the line between the points named is made up of two or more independent roads.

To TENNILLE, GA.,		
From Savannah	184 miles,	1 line.
" Charleston	221 "	2 lines.
" Wilmington	354 "	3 "
Rate \$2.81 per ton.		

TO LA GRANGE, GA.,

From Savannah	296 miles, 2 lines.
" Charleston	368 " 3 "
" Wilmington.....	500 " 4 "
Rate \$3.25 per ton.	

TO FORT VALLEY, GA.,

From Savannah	221 miles, 1 line.
" Charleston	292 " 3 lines.
" Wilmington.....	424 " 4 "
Rate \$2.53 per ton.	

TO DENMARK, S. C.,

From Savannah	90 miles, 1 line.
" Charleston	81 " 1 "
" Wilmington.....	213 " 1 "
Rate \$2.60 per ton.	

TO COLUMBUS, GA.,

From Savannah	291 miles, 1 line.
" Charleston	389 " 4 lines.
" Wilmington.....	553 " 2 "
Rate \$3.14 per ton.	

TO OPELIKA, ALA.,

From Savannah	319 miles, 1 line.
" Charleston	406 " 5 lines.
" Wilmington.....	545 " 3 "
Rate \$3.14 per ton.	

TO TROY, ALA.,

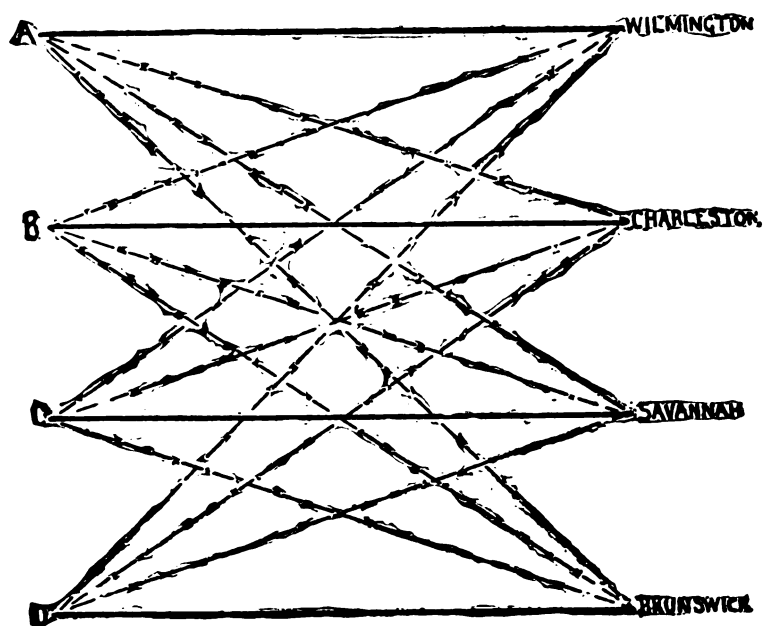
From Savannah	360 miles, 1 line.
" Charleston	475 " 1 "
" Wilmington.....	687 " 2 lines.
Rate \$3.50 per ton.	

TO MONTGOMERY, ALA.,

From Savannah	340 miles, 1 line.
" Charleston	527 " 1 "
" Wilmington.....	611 " 2 lines.
Rate \$3.00 per ton.	

The complainants say that these tables show that the rates complained of are made without any consistency, without any reference to distance, and that they uniformly discriminate against Savannah by admitting Charleston and Wilmington upon equal terms into that territory which is naturally tributary to Savannah.

The defendants do not deny that the rates are made upon the principle complained of, but they say that the principle is just, advantageous to the various localities which thereby enjoy the benefit of the competition, and that, whatever objection there may be to it, it is the only system which is possible under the peculiar circumstances which exist in this southern territory. Exactly what this system is, and exactly the points of difference between the claims of the complainants and the defendants is well indicated by a graphic illustration produced upon the trial by counsel for the defendants, which was made an exhibit and is reproduced here.



Referring to the above outline, Wilmington, Charleston, Savannah and Brunswick are four points upon the seacoast. A, B, C, and D are four interior points. The heavy lines represent lines of railway connecting each one of these ocean ports with the corresponding interior point, and designate the shortest line of railway between such points. The dotted lines represent lines of railway between the several ocean ports and the interior points. Now, the complainants insist that the lowest rate should in all cases be made upon the shortest line; that is, Wilmington should have the lowest rate to A., Charleston to B., Savannah to C., and Brunswick to D. The defendants insist that when the rate has been made over the short line, as from Savannah to C., then Wilmington, Charleston and Brunswick are all entitled to the same rate to C., although the lines of communication are much longer.

To state the proposition with reference to some of the points actually in evidence in this case. Valdosta is 158 miles from Savannah by the Savannah, Florida & Western Railway. The rate upon fertilizers from Savannah to Valdosta is fixed by the Georgia Railway Commission. Now, the defendants say that when this rate is once fixed, if Charleston can reach the same point by a longer line, it is entitled to do so at the same rate, although that line is 413 miles in length and composed of three independent railroads as against 158 miles over one railroad.

So in the case of Hawkinsville. This station is situated upon the Southern Railway between Brunswick and Macon. The rate from Brunswick is fixed by the Georgia Commission. Now, when that rate has been determined, Charleston and Savannah, or rather the lines leading from Charleston, Savannah and Wilmington, insist that they are entitled to the same rate, although the distance from Brunswick to Hawkinsville is but 161 miles over one line as against 211 miles from Savannah over two lines, 297 miles from Charleston over four lines, and 430 miles from Wilmington over five lines.

It appears from the testimony that there are in the States of Kentucky, Virginia, Tennessee, Mississippi, Alabama, Georgia, Louisiana, North Carolina, South Carolina and Florida, 148 of these points to which the rates on fertilizers from Charleston, Savannah, Brunswick and Jacksonville are the same. The illustrations given in these findings of fact all show that Savannah

loses the benefit of the less distance. There must be many of these common points to which the distance from Savannah is greater than from Charleston and in respect of which Savannah has the advantage over Charleston. No attempt has been made, however, upon the part of the defendants to show what these points are, nor whether, on the whole, Savannah is at an advantage or disadvantage under this system of rate-making. Upon the other hand, the defendants claim that this is entirely immaterial, that these points have the right to the common rate provided that the primary, or determinative rate, which is usually the short-distance rate, is properly made; and provided further that the long line can carry without loss at that rate.

We are unable to find that the short-distance rate in any case called to our attention discriminates against Savannah. In most cases that rate is the one made by the Railroad Commission of either Georgia or South Carolina. Neither can we find from the testimony that the long line in any case carries at a loss. Although the rate per ton per mile in some instances is low, the testimony of the defendants tends to prove that it is a remunerative rate, and there is nothing to show the contrary.

It does not appear that the Southern Railway & Steamship Association originated this system of "common points," but that it found the same already in existence and adopted it. For a long time Brunswick, Savannah, Port Royal and Charleston have entered upon equal terms this common point territory. Wilmington did not formerly, but the lines leading from that city strenuously insisted upon their right to participate in the same rates, and in many instances exacted that right. Finally that question was submitted to the Board of Arbitration of the Southern Railway & Steamship Association, and that Board published its award April 29, 1895, by which it was decided that the rates should be the same from Wilmington as from other South Atlantic ports to all points in this territory, excepting those upon and south of the Savannah & Western extension of the Central Railroad of Georgia from Savannah to Lyons and the Georgia & Alabama Railway in the State of Georgia. This award was accepted by the various lines interested and has since been acquiesced in.

The complainants put in evidence upon the trial certain tables of rates and distances which they claim show a discrimination

against Savannah and in favor of Charleston. The first of these consists of two sets of tables, each made up of 33 stations. In the first set the stations selected are in the States of Georgia and Florida, and the tables show the distance, the rate per ton, and the rate per ton per mile from both Savannah and Charleston.

These averages are :

From	Distance.	Rate per ton.	Rate per ton per mile.
Savannah	190	\$2.47	\$.013
Charleston	284	2.79	.0098

The second set is made up of 33 stations in the States of North Carolina and South Carolina. The facts shown are the same and the averages are :

From	Distance.	Rate per ton.	Rate per ton per mile.
Savannah	176	\$2.87	\$.0168
Charleston	116	2.21	.0191

The complainants introduced another table made up of 74 stations, no one of which appears in the tables last referred to. These stations are situated in the States of Georgia, Alabama, Florida and South Carolina. The average distance, rate per ton, and rate per ton per mile from Savannah and Charleston are as follows :

From	Distance.	Rate per ton.	Rate per ton per mile.
Savannah	156	\$2.25	\$.02079
Charleston	252	2.50	.01244

It may be observed in this connection that according to the testimony of the defendants only 10 per cent of the fertilizer and fertilizer rock carried to Valdosta during the year 1896 went by the Plant System. Assuming that the Plant System carried nothing from Charleston, this would mean that nine tenths of the fertilizer used in Valdosta was transported 413 miles instead of 158 miles.

The complaint incidentally charges that in the application of this system the carriers charge less for the longer haul to the competitive point than they charge to intermediate points upon the same line. There seems to be a difference between a "common point," which is a point reached by two or more lines, and a "base point," which is a point at which competition has forced down the rates below those upon either side of it. The defendants

admit that the rate is in many cases lower to the basing point than to intermediate points, and the complainants have called our attention specifically to the following instances in which the greater charge is made to the nearer point, when the transportation is over the same line, in the same direction at the same time.

1. The Charleston & Savannah Railway connects Charleston and Savannah. Going south from Charleston the rate to Monteith, Ga., is \$1.74 and the distance 101 miles, while the rate to Savannah, 14 miles further, is \$.80 per ton. So going from Savannah north towards Charleston the rates and distances to intermediate points are:

	Rate.	Distance.
Hardeeville	\$1.20	24 miles
Yemassee	1.50	54 "
Jacksonboro	1.70	78 "
Drayton	2.00	108 "
Charleston .....	.80	115 "

The respondent Charleston & Savannah Railway Company alleges that these rates are justified by water competition between Charleston and Savannah. We find that there is such water competition which is of controlling force, and that the respondent could not, as against this competition, charge more than \$.80 per ton, while the rates to intermediate points are substantially those fixed by the Railroad Commissions of Georgia and South Carolina. That the rates are not exactly the same going north as going south for the same distance is accounted for by the fact that the South Carolina Commission allows a higher rate upon fertilizers than the Georgia Commission.

2. The Charleston & Savannah Railway is the direct line between those two cities, but there is another somewhat longer line made up of the South Carolina & Georgia Railroad from Charleston to Denmark, and the Florida Central & Peninsular Railroad from Denmark to Savannah. These two defendants make a joint rate between Charleston and Savannah of \$.80, the distance being 171 miles. Rincon, Meinhard and Wheat Hill are all stations upon the Florida Central & Peninsular Railroad in the State of Georgia, distant from Charleston respectively 153 miles, 161 miles and 167 miles, and the rate is in each case \$2.30 per ton.

We have already found that water competition between Charleston and Savannah necessitates the rate of \$.80. The rate of \$2.30 to the intermediate points above referred to does not exceed that allowed by the State Commissions of Georgia and South Carolina.

3. The Charleston & Savannah Railway Company in connection with the Savannah, Florida & Western Railway Company makes a rate to Saffold, Ga., of \$3.64 per ton, while to Alaga, Ala., which is situated upon the same line, and only 1 mile further from Charleston, the rate is \$3.25 per ton.

4. As already stated, the long line between Charleston and Valdosta is composed of the South Carolina & Georgia Railroad from Charleston to Augusta, the Georgia Railroad from Augusta to Macon and the Georgia Southern & Florida Railway from Macon to Valdosta. These lines make a joint rate from Charleston to Valdosta of \$2.48.

Thomson, Mayfield and Haddock's are stations upon the Georgia Railroad between Augusta and Macon. The South Carolina & Georgia Railroad and the Georgia Railroad make the following joint rates for the following distances to those points:

Thomson	\$2.64	175 miles
Mayfield	2.64	198 "
Haddock's	2.64	244 "
Macon	2.64	263 "

Kathleen, Sycamore, Tifton and Sparks are stations upon the Georgia Southern & Florida Railway between Macon and Valdosta. The South Carolina & Georgia Railroad, the Georgia Railroad and the Georgia Southern & Florida Railway make joint rates from Charleston to these stations as follows:

Kathleen	\$3.32	288 miles
Sycamore	2.88	349 "
Tifton	2.53	367 "
Sparks	2.87	388 "
Valdosta	2.48	413 "

Of the above stations, Thomson, Mayfield, Haddock's, Kathleen, Sycamore and Sparks are non-competitive stations, while Macon, Tifton and Valdosta are competitive points.

The defendants allege that the low rates at these competitive points are forced by railway competition, and that the rates to intermediate points are reasonable in and of themselves. We

find that there is railway competition at the above-named competitive points, which undoubtedly *occasions* the low rates. That competition does not necessitate the low rates, except that it induces a number of carriers, all of whom are subject to the Act to Regulate Commerce, to fix them by voluntary agreement. The rates to intermediate points are not greater than those allowed by the State Railroad Commissions of Georgia and South Carolina, and in this sense they are reasonable "in and of themselves." The making of the lower rate to the more distant competitive point introduces, we think, a new element, and we are not prepared to find affirmatively that the higher intermediate rates in comparison with the lower competitive rates are reasonable either as matter of law or as matter of fact.

5. The line from Charleston to Hawkinsville is made up of the South Carolina & Georgia Railway to Augusta, the Augusta Southern from Augusta to Tennille, the Wrightsville & Tennille from Tennille to Dublin and the Oconee & Western from Dublin to Hawkinsville. The line from Savannah to Hawkinsville is composed of the Central of Georgia Railway from Savannah to Tennille, the Wrightsville & Tennille from Tennille to Dublin and the Oconee & Western from Dublin to Hawkinsville, being the same line from Savannah to Hawkinsville and from Charleston to Hawkinsville both make a joint rate from those two cities to Hawkinsville of \$2.53.

Hephzibah, Matthews and Warthen are upon the line of the Augusta Southern. The Augusta Southern and the South Carolina & Georgia maintain the following rates from Charleston to these stations :

Hephzibah.....	\$2.94	158 miles
Matthews.....	3.10	169 "
Warthen.....	2.87	208 "

Wrightsville is upon the Wrightsville & Tennille Railroad between Tennille and Dublin. The South Carolina & Georgia Railroad, the Augusta Southern Railroad and the Wrightsville & Tennille Railroad make the following joint rates from Charleston :

Wrightsville.....	\$2.92	238 miles
Dublin	3.12	257 "

Dexter is upon the Oconee & Western Railway between Dublin and Hawkinsville. The South Carolina & Georgia Railroad,

the Augusta Southern Railroad, the Wrightsville & Tennille Railroad and the Oconee & Western Railway maintain the following joint rates from Charleston :

Dexter	\$3.10	270 miles
Hawkinsville	2.53	297 "

The rate from Savannah to Tennille over the Central of Georgia Railway is \$2.31 and the distance 134 miles. Between Tennille and Hawkinsville and to Hawkinsville the Central of Georgia Railway, the Wrightsville & Tennille Railway and the Oconee & Western Railway maintain the same rates as above stated.

The defendants named in this paragraph offer the same justification as stated in the preceding paragraph, *viz.*, that Hawkinsville is a competitive point and that the rates to the intermediate stations named are reasonable.

We find that Hawkinsville is a competitive point, and that the rate from Brunswick to Hawkinsville is fixed by the Georgia Commission. Our finding as to the rates to the intermediate stations is the same as that in paragraph four.

The Wrightsville & Tennille Railroad Company interposes a still further defense by saying that, although it does make the joint rates found with the Augusta Southern and the South Carolina & Georgia Railroad Companies, nevertheless it does so under order of court. It would appear from an examination of the case in which this order was made and which is reported in 74 Fed. Rep. 522, that formerly the Wrightsville & Tennille Railroad had received and forwarded upon equal terms for both the Central of Georgia Railway and the Augusta Southern Railway from Tennille. At a certain time, however, owing to some arrangement with the Central of Georgia Railway probably, it declined to receive freights from the Augusta Southern at other than its local rates. A petition was thereupon brought by the Augusta Southern Railway asking the circuit court for that district to compel the Wrightsville & Tennille to enter into through arrangements with it upon the same terms that it did with the Central of Georgia Railway. The court was apparently of the opinion that it had no power to compel a through route, but it did treat the bill in equity as a petition for a mandamus under the new section added by act of March 2, 1889, and thereupon ordered the Wrightsville & Tennille Company to transport the freights re-

ceived from the Augusta Southern at the same rate that it transported those received from the Central of Georgia Railway. It is under this order that the joint tariff in question is made. The Wrightsville & Tennille Railroad Company is simply obliged to make the same joint rates with the Augusta Southern that it makes with the Central of Georgia. The complainants allege that the Southern States Freight Association is responsible for the continuance of the system and for the existence of the rate complained of. The testimony shows that several of the defendants who publish and participate in these rates never have been members of that Association, and that the Association itself, since the decision of the Trans-Missouri Case, has been dissolved. No finding is therefore necessary as to the scope and purpose of that Association.

No question is made by any of the defendants but that they are subject to the jurisdiction of the Act with respect to the rates complained of, except possibly the Georgia Railroad. The Georgia Railroad Company was made a party to these proceedings and was duly served with the complaint, but never appeared. The Central of Georgia Railway Company sets forth in its answer that there is no such corporation as the Georgia Railroad Company; that the Georgia Railroad, so called, was originally owned by the Georgia Railroad & Banking Company and was leased by that company to one William Wadley and his assigns for a term of years not yet expired; that he assigned a certain interest in that lease to the Louisville & Nashville Railroad Company and the remaining interest to the Central of Georgia Railroad & Banking Company, and that the last-mentioned interest is now claimed by the respondent company, the Central of Georgia Railway Company; that said assignees are operating said railroad under a joint management and under the name of the Georgia Railroad, and not the Georgia Railroad Company.

Nothing was said in the testimony upon this point. It appears that the railroad in question is operated as an independent line. The Louisville & Nashville Railroad Company is not a party to these proceedings.

Upon these findings to what relief, if any, are the complainants entitled?

The underlying cause of complaint is the system upon which

these rates are made, and the most important question is whether that system is in violation of the Interstate Commerce Act in the respect complained of, and if so, whether the Commission has power to correct such violation.

The position of the complainants seems to be that certain territory is tributary to the city of Savannah and that Charleston must not be allowed to enter this territory upon equal terms as to freight rates. This really amounts to saying that the rate should be determined by the distance. It has often been said that distance is an important element in the making of rates, and it has been held that a carrier would not be *compelled* to disregard distance in order to place two localities upon commercial equality. *Commercial Club of Omaha v. Chicago, R. I. & P. R. Co.* 6 I. C. C. Rep. 647; *Cincinnati Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 7 I. C. C. Rep. 180.

Upon the other hand, it often happens that distance is altogether disregarded, and it has been held that this may be proper within certain limits and under certain conditions. *Imperial Coal Co. v. Pittsburg & L. E. R. Co.* 2 I. C. C. Rep. 618, 2 Inters. Com. Rep. 436. The proposition of the defendant is, however, that in this whole territory distance should be entirely obliterated. The mere fact that a town is situated at the junction of two railroads entitles that town to the same freight rate from Charleston and Savannah, no matter what the relative distance may be.

To put the question in a concrete form. Valdosta is 158 miles from Savannah and 413 miles from Charleston, yet the defendants claim that the rate from Savannah and Charleston should be the same. It is found that only 10 percent of the fertilizer used in Valdosta during the year 1896 came from Savannah, the balance of it being brought from Charleston. Assuming that the cost of that article was the same at Savannah and Charleston, this would mean that nine tenths of all the fertilizer consumed in that vicinity was transported 413 miles while it might have been obtained by transporting it 158 miles. Now, the complainants say that this is wrong; that manifestly it costs much more to transport fertilizer from Charleston than from Savannah, and that somebody in the end must pay for that species of foolishness, if it be allowed to continue. Upon the other hand, the defendants urge that this system gives Valdosta the benefit of competi-

tion in the markets of both Charleston and Savannah, and that so long as railroad companies are operated as private enterprises they may of right engage in any legitimate business which yields a profit.

Probably the true solution of this controversy is to be found in a mesne between the contentions of the two parties. It can hardly be said that a particular locality is entitled to describe about itself a circle and exclude its competitors from this area. Neither can it well be claimed that distance ought not to be a factor in the making of rates, and that a city is entitled to no benefit by reason of its advantageous position. The defendants themselves concede that there are limits beyond which this disregard of distance ought not to extend. Formerly Wilmington was not allowed to come into this common-point territory for the very reason that the distance was against that city. Finally that question was submitted to arbitration and the arbitrators determined that Wilmington might come into certain territory, but a line was established below which it could not go, and that city is to-day excluded from points south of this line solely on account of distance. However, we do not feel called upon to decide in this case whether the principle itself is right, nor whether the application of that principle is too extensive, for the reason that, if we determine that there is a wrong, we clearly have no power to correct that wrong.

Valdosta is reached by one line of railroad from Savannah and by an independent line of railroads from Charleston. The rate from Savannah to Valdosta is fixed by the Railroad Commission of Georgia. If the railroads constituting the line from Charleston to Valdosta see fit to make the same rate from Charleston as is made from Savannah we have no power to order them not to do so, for it has always been understood that the Commission had no authority to fix a minimum rate. *Re Chicago, St. P. & K. C. R. Co.* 2 I. C. C. Rep. 231, 2 Inters. Com. Rep. 137.

If some point is taken to which both rates are interstate, like Montgomery, the result is still the same. Each line is an independent line and may fix its own rate wherever it pleases, and we have no power whatever over that rate when established. It is manifest that a wrong like that complained of in this case could not be corrected without authority to establish both the maximum

and the minimum rate. And we can establish neither. *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. 243.

But if the Commission has no power to correct a discrimination of this sort where the rate from Savannah is made by one line and the rate from Charleston is made by another line, has it not power to correct it where the same line makes both rates, and ought it not to do so? The Plant System extends from Charleston through Savannah to Valdosta. The rate by that system from both Charleston and Savannah to Valdosta is the same, although the distance from Charleston is almost twice as great. Should not this apparent wrong to Savannah be righted?

If this rate stood alone and were voluntarily made by the Plant System, it would probably be a discrimination against Savannah which ought to be corrected. But under the circumstances it is difficult to see how it can be called an unjust discrimination or how it works to the injury of Savannah. The rate from Charleston to Valdosta is fixed by an independent line. The distance through Savannah is but 275 miles as against 413 miles by that line. Unless the Plant System makes the same rate as is made by the circuitous line it can do no business whatever. Under these circumstances we think it may properly meet the rate from Charleston which is made by the longer line, and that it does not, in making and maintaining this rate, unjustly discriminate against the city of Savannah. If the rate from Charleston to Valdosta were in any way subject to control, our judgment might be otherwise.

The complainants insist that even though the common-point system of rate-making is consistent, nevertheless the defendants discriminate unduly against Savannah in the application of that system. They introduce certain tables which apparently show that Charleston has the benefit of a better rate into the territory of Savannah than Savannah has into the territory of Charleston. It is not clear that these tables fully sustain the contention of the complainants, since the average distances are not the same and the rate per ton per mile should not be the same for short as for long distances; but assuming that they do show that Charleston has such an advantage, that may well follow from the system and not from its unfair application. If the common points to which

Savannah and Charleston take the same rate are so located that upon the whole the distance is less from Savannah than from Charleston, then manifestly the result must be the one which the complainants say their tables demonstrate. In other words, the vice, if one is established, is that of the system, and not of its application; and we have already said that we cannot correct that fault.

But the complainants say that there are instances in which there is a manifest discrimination against Savannah in the making of these rates. For instance, Charleston is 115 miles distant from Savannah. To all stations in Georgia, not common points, a difference in rate of 50 cents per ton in favor of Savannah is made by the Plant System. It is urged that this difference is too little in view of the difference in distance.

To this we cannot assent. It is found that water competition between Charleston and Savannah compels the making of a rate of 80 cents per ton between those two cities. If 80 cents is a proper local rate, 50 cents cannot be said to be an unfair difference in the through rate from Charleston *via* Savannah to Georgia points. Looking merely to the cost of service, the Plant System would probably make more money in transporting fertilizer from Charleston to Burroughs upon the through rate of \$1.38 than in transporting the same article from Charleston to Savannah upon a local rate of 80 cents and from Savannah to Burroughs upon an other local rate of 88 cents. The Charleston-Savannah rate is fixed by water competition; the Savannah-Burroughs rate is fixed by law. These two rates being established, the through rate from Charleston to Burroughs is not an unreasonable one.

This difference in rate between Charleston and Savannah is maintained to all points, not common points, in the State of Georgia upon the Plant System, but when that line of railway crosses the southern boundary of Georgia and enters the State of Florida this difference begins to diminish and finally disappears altogether.

If not in some way accounted for this would be a manifest discrimination against Savannah; but it is accounted for by the fact that the water rate on fertilizers from both Charleston and Savannah to Jacksonville, Fla., is the same, and must accordingly be the same at all intermediate points to which fertilizer can be

brought *via* Jacksonville by ocean and rail as against the all rail line. Circumstances over which the Plant System has no control determine that the rate from Charleston and Savannah to these points shall be the same by other lines. This being so, we have already indicated that the Plant System may meet that rate.

Something of the same sort occurs upon the Plant System in the State of Alabama. That system is operated as a continuous line from Savannah to Montgomery, the portion of it which is in the State of Alabama and which extends from Alaga to Montgomery being known as the Alabama Midland Railway in Alabama. Upon all stations on the Plant System in the State of Georgia, not common points, a difference of 50 cents per ton is made in favor of Savannah, but as soon as the Alabama State line is crossed this difference disappears, and at all stations between Alaga and Montgomery the rate from Charleston and Savannah is the same. This was the case when the answer of the Plant System was filed, but at the date of the hearing the rates had been revised and a differential of 20 cents per ton in favor of Savannah established. Nothing in this case appears to justify a different differential to most points upon the Plant System in Alabama from what it is in Georgia. There are common points upon that system in both Georgia and Alabama.

We are inclined to think that there are stations upon the Plant System in Florida, and also upon the line of the Florida Central & Peninsular Railroad in Florida to which a sufficient difference is not made in the rate from Charleston and Savannah, and that the same thing is probably true of stations upon the Alabama Midland Railway in Alabama; but we do not feel that our information is sufficiently definite to enable us to make any order in this respect.

We are satisfied that water competition through Jacksonville justifies the same rate from Charleston and Savannah to certain points in Florida, but we do not know to what points. We know that competition through Montgomery, and perhaps at other points upon the Alabama Midland, justifies a diminution in the difference in rate between Charleston and Savannah, but we do not know just how far. It appears that changes have been made in these rates since the filing of the complaint, which in some cases remove the ground for complaint. We think best, there-

fore, not to attempt to make any order in this particular, but to rely upon the defendants to adjust these rates in accordance with our suggestions, giving the complainants leave to apply for an order if this is not done.

The complaint incidentally charges the defendants with certain violations of the fourth section and the findings of fact state the instances which were called to our attention by the pleadings and proofs.

The charging by the Charleston & Savannah Railway of higher rates to intermediate points between Charleston and Savannah than the rate over the entire distance between those cities is justified by the existence of water competition; and this is also true of the line between the same cities composed of the South Carolina & Georgia and the Florida Central & Peninsular Railway Companies.

In all other instances the justification relied upon is the existence of railway competition between carriers subject to the Act to Regulate Commerce. The Commission has uniformly held up to the present time that this species of competition does not create the necessary dissimilarity of circumstances and conditions under that section, and such would have been its decision in this case upon the law as it was supposed to be when the findings of fact were prepared. Since then, however, the Supreme Court of the United States by its decision in the case, *Interstate Commerce Commission v. Alabama M. R. Co.* decided November 8, 1897, 168 U. S. 144, 42 L. ed. —, has determined that this view of the law is erroneous, and that railway competition may create such dissimilar circumstances and conditions as exempt the carrier from an observance of the long and short haul provision. Under this interpretation of the law as applied to the facts found in this case, we are of the opinion that the charging of the higher rate to the intermediate points, as set forth, is not obnoxious to the fourth section. The section declares that the carrier shall not make the higher charge to the nearer point under "substantially similar circumstances and conditions." If the conditions and circumstances are not substantially similar, then the section does not apply and the carrier is not bound to regard it in the making of its tariffs. The court has decided that railway competition, if it exists, must be considered. If, therefore, such competition does

actually control the rate at the more distant point that rate is not made under the same circumstances and conditions as is the rate at the intermediate point and the higher rate is not prohibited by the fourth section.

Recurring now to the findings of fact, we see that in every case the rate by the longer line to the more distant point is not only controlled but absolutely fixed by competitive conditions. If the lines from Charleston to Valdosta have a right to compete at that point for traffic in commercial fertilizer, the rate which they make is determined by competition alone, and that rate is not in fact made under the same circumstances and conditions as are the rates to intermediate points, if such railway competition is to be taken into account. It is our opinion, therefore, that the higher intermediate rates involved in this case are not in violation of the fourth section.

Whether those rates are in violation of the third section, in that they give an undue preference to the more distant point, is a different question which might arise in cases of this kind. It is incidentally raised by the allegations in this complaint, but was not relied upon on the trial. There is nothing in the case which bears upon it except the mere fact that the rate to the intermediate point is higher. Under these circumstances we have not considered the question as fairly before us, and do not pass upon it in disposing of the case.

In accordance with the above views no order will be made at the present time, but the complaint will be retained, with leave to the complainants to apply for an order as to rates to Florida points and upon the Alabama Midland Railway in Alabama, if so advised.

MORRISON, *Commissioner*:

I concur in the disposition made of this case for the reason that the Act to Regulate Commerce, as recently interpreted by the courts, affords no remedy for the grievances complained of.

CHAMBER OF COMMERCE OF THE CITY OF
MILWAUKEE

v.

CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY; CHICAGO & NORTHWESTERN RAILWAY COMPANY; CHICAGO, ST. PAUL, MINNEAPOLIS & OMAHA RAILWAY COMPANY; BURLINGTON, CEDAR RAPIDS & NORTHERN RAILWAY COMPANY; MINNEAPOLIS & ST. LOUIS RAILWAY COMPANY, W. H. Truesdale, Receiver; ILLINOIS CENTRAL RAILROAD COMPANY.

(No. 397.)

Decided January 19, 1893.

1. Distances by shortest available routes are the proper distances on which to base comparison of differentials in grain rates from the same points of shipment to two different markets, situated as are Milwaukee and Minneapolis with reference to various sources of grain supply.
2. Although carriers serving but one of two competing cities may, by reducing their rates to the city served by them, prevent the correction of an unjust relation of rates to the two places from common points of supply, nevertheless it is the duty of the Commission to condemn such a relation of charges, and to indicate the basis upon which the rates should be readjusted.
3. On complaint of unlawful rates charged by defendants on wheat and other kinds of grain from points of shipment in Iowa, Minnesota, and South Dakota to Milwaukee, as compared with rates on like grain to Minneapolis, and of unlawfully higher rates on wheat than on flour from some of the shipping points,—*Held*:
That in many instances, and in varying degrees at different points, the differentials in grain rates to Milwaukee above rates in force to Minneapolis from shipping points on and south of the Southern Minnesota Division of the C. M. & St. P. Ry. give Minneapolis undue and unreasonable preference and advantage, and subject Milwaukee to undue and unreasonable prejudice and disadvantage. That just and reasonable differentials in such rates would be obtained by applying the interstate distance tariff of the C. M. & St. P. Ry., or the C. & N. W. Ry., to the short-line mileage from the several points of shipment to Minneapolis and Milwaukee. That just and reasonable rates to Milwaukee would be made by adding such differ-

entials to rates from time to time in force to Minneapolis, and any higher rates to Milwaukee would be relatively unreasonable and unjust to that city. That charging any higher rate on wheat than on flour between the same points and on the same line is unjust discrimination and unlawful.

G. W. Hazleton and E. P. Bacon for complainant.

Burton Hanson for C. M. & St. P. Ry. Co.

Lloyd W. Bowers and John T. Fish for C. & N. W. Ry. Co.

Thomas Wilson and S. L. Perrin for C. St. P. M. & O. Ry. Co.

James Fentress for Ill. Cent. R. R. Co.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, Commissioner:

The principal grievance sought to be redressed in this proceeding is an alleged discrimination against the city of Milwaukee, and in favor of the city of Minneapolis, in the relative rates maintained by the defendant carriers for the transportation of wheat and other kinds of grain from various points in the States of Iowa, Minnesota, and South Dakota to those two cities respectively. It is also incidentally averred that the wheat rates to Milwaukee are in themselves excessive; and there is a further complaint that the rates of certain of the defendants on wheat are in some instances higher than their rates on flour.

In support of the charge that these rates discriminate unjustly against Milwaukee, the complaint sets forth various tables of rates and distances from numerous points in the territory in question to Milwaukee and Minneapolis, and asserts that the differences in rates in favor of Minneapolis are greater than the usual differences for corresponding differences of distance.

Inasmuch, however, as only one of the defendant companies reaches by its own lines both Milwaukee and Minneapolis, it follows that the comparison of relative differences of rates and distances made by complainant is a comparison in most instances between rates and distances over the lines of one carrier with rates and distances partly over the lines of that carrier and partly over the lines of other carriers; and that only in the case of the Chicago, Milwaukee & St. Paul Company is the comparison between different rates made by the same carrier.

It is contended by complainant that the relative injustice of the rates to Milwaukee is demonstrated by these tables in three ways.

1. That the rates to Milwaukee are greater than those charged for similar distances to Minneapolis.

2. That the *difference* in rates charged from junction points to the respective terminals is greater than the difference in rates charged for the same difference in distance from points on the same line to Milwaukee.

3. That the rates to Milwaukee increase by a greater amount for a given increase of distance than do the rates to Minneapolis for a like increase of distance.

The tables hereinafter inserted in this report contain various sets of distances, and have been analyzed with respect to each of the three points made by the petitioner as above stated.

Another ground on which complainant relies is that the rates charged by defendants for the transportation of wheat from many of the points on their respective lines to Minneapolis, taken in connection with the rates maintained by them for the transportation of flour and other mill products from Minneapolis, either by way of Milwaukee or Lake Superior ports, to various points on and adjacent to the eastern seaboard, under joint arrangements with other carriers by rail or water for continuous shipment, make a less aggregate through rate from the same points on the raw material and manufactured products than is charged for the transportation of wheat by the same line to Milwaukee and of the manufactured products from Milwaukee to the seaboard, notwithstanding the distance from such points of origin to Milwaukee direct is less than to Milwaukee by way of Minneapolis.

The complainant also contends that the territory south of a parallel of latitude midway between the parallels of Milwaukee and the head of Lake Superior is naturally tributary to Milwaukee, and that rates should be so adjusted as to favor shipments from that territory to Milwaukee.

The defendants deny that the rates to Milwaukee are relatively or absolutely too high, or that they discriminate against Milwaukee. They allege that the distances given in the tables furnished by complainant are not the distances by the shortest available routes from the several points of origin to Minneapolis, and insist that—so far as relative distances are a guide to the determination of the justice of relative rates—the distances by the short routes are the distances that should be compared. In support of this

contention, tables of rates and distances are furnished by the Chicago & Northwestern Railroad Company, showing differences in distance to Milwaukee and Minneapolis from various points referred to in the complaint by the short-line routes as well as by the long-line routes.

The testimony taken in this proceeding is so voluminous, and the mass of figures and statistics so confusing, that it is not easy to determine from the record the precise facts in every detail, though the following findings—which are deemed material and controlling—are believed to be sufficiently accurate for a proper disposition of the case :

I. In the territory to which the complaint refers, and between the Mississippi and Missouri rivers, there are seven main lines of the defendant carriers running generally east and west; four belonging to the Chicago, Milwaukee & St. Paul Railway Company, two to the Chicago & Northwestern Railway Company, and one to the Illinois Central Railroad Company.

These lines are intersected at numerous points by branches of their main lines, by lines of the other defendants in this proceeding and by lines of carriers not parties hereto. These intersecting lines run generally in a southerly direction from Minneapolis or points in that vicinity, and may be designated as north and south roads. Also, at various Mississippi River crossings, the east and west roads are connected with Milwaukee and Chicago by their own lines and by lines of other companies.

II. The following is a more particular description of the lines of the several defendants in the territory mentioned :

The Illinois Central runs westerly from Chicago, crossing the Mississippi River at Dubuque, thence through northern Iowa to Cherokee in the northern part of that State, thence by one branch westerly and southwesterly to Sioux City on the Missouri River, and by another branch northwesterly to Sioux Falls in the southeastern part of South Dakota.

The Chicago & Northwestern has one main line running westerly from Chicago, crossing the Mississippi River at Clinton, thence through central Iowa to Tama in that State (where it intersects the most southerly of the four lines of the Chicago, Milwaukee & St. Paul road); thence by one line westerly and

southwesterly to Omaha in the State of Nebraska, and by another more northerly line parallel for most of its course to the former and branching out to several termini in the western part of Iowa.

The Chicago & Northwestern has a second line which runs northwesterly from Milwaukee to or near La Crosse on the Mississippi River, thence along the east bank of that river to Winona where it crosses into Minnesota, thence running westerly through southern Minnesota to Pierre, South Dakota, on the Missouri River.

The Chicago, Milwaukee & St. Paul has one line running west from Chicago, crossing the Mississippi River at Sabula, thence westerly through central Iowa, intersecting the Chicago & Northwestern road at Tama above mentioned, to Aspinwall in the western part of Iowa, thence by one branch southwesterly to Council Bluffs, and by another branch northwesterly to Sioux City on the Missouri River, and beyond into South Dakota. This line for most of the distance is parallel to and near the line of the Chicago & Northwestern, and parallel to and about 60 miles south of the line of the Illinois Central. It may be designated as the Iowa Division.

A second main line of the Chicago, Milwaukee & St. Paul runs west from Milwaukee, crossing the Mississippi River at Prairie du Chien, thence through the north part of Iowa to Chamberlain, South Dakota, on the Missouri River, with a branch from Marion Junction, South Dakota, southwest to Running Water on the Missouri River. This is known as the Iowa and Dakota Division.

A third line of the Chicago, Milwaukee & St. Paul runs northwesterly from Milwaukee, crossing the Mississippi River at La Crosse, thence westerly through the south part of Minnesota into South Dakota, having its terminus at Woonsocket in the last-named State. This is known as the Southern Minnesota Division.

A fourth line of the Chicago, Milwaukee & St. Paul runs northwesterly from La Crosse along the westerly bank of the Mississippi River to St. Paul and Minneapolis, thence westerly through Minnesota and South Dakota to Bowdle in the northwest part of South Dakota, with north and south branches to

other points in South Dakota and North Dakota. This is known as the Hastings and Dakota line.

In addition to the foregoing seven lines which traverse the region in question from east to west, there is the Burlington, Cedar Rapids & Northern Railway, which has a general northwesterly and southeasterly course. This road runs westerly and then northwesterly from Clinton, Iowa, on the Mississippi River, to Vinton, Iowa; thence by one branch northwesterly to Albert Lea, in the south part of Minnesota on the Southern Minnesota branch of the Chicago, Milwaukee & St. Paul; and by another branch westerly and northwesterly to Watertown, South Dakota, on one of the lines of the Chicago & Northwestern, with a branch to Sioux Falls, South Dakota, and other branches.

At Clinton, above mentioned, the southeastern terminus of this road, it is connected with Chicago by the Chicago & Northwestern and with Milwaukee by the Chicago, Milwaukee & St. Paul.

The other two defendants have lines running southerly from Minneapolis:

The Chicago, St. Paul, Minneapolis & Omaha runs from Minneapolis southwesterly to Sioux City, crossing the east and west lines above described at numerous junction points. It has also a branch to Sioux Falls, South Dakota, and several other branches.

The Minneapolis & St. Louis runs south from Minneapolis to Albert Lea on the southern Minnesota line of the Chicago, Milwaukee & St. Paul (crossing the Chicago, St. Paul, Minneapolis & Omaha at a point near Minneapolis, and the northerly line of the Chicago & Northwestern at Waseca), thence from Albert Lea southwesterly to Livermore, Iowa, on the Burlington, Cedar Rapids & Northern, crossing another branch of the last-named road at Forest City, the northern Iowa line of the Chicago, Milwaukee & St. Paul at Britt, and a branch of the Chicago & Northwestern at Luverne. The Minneapolis & St. Louis has also a line running west from Minneapolis to Watertown, South Dakota, where it meets a branch of the Chicago & Northwestern and also the Burlington, Cedar Rapids & Northern.

The Chicago, Milwaukee & St. Paul, the four main lines of which run generally east and west, has also a line running from Minneapolis south to Mason City on its northern Iowa line, and

several north and south branches connecting its east and west lines with each other.

Of the six defendant companies, only one, the Chicago, Milwaukee & St. Paul, reaches by its own lines both of the competing places, Milwaukee and Minneapolis; two of them, the Illinois Central and the Burlington, Cedar Rapids & Northern, reach by their own lines neither of these cities (although the former has a line to Chicago); and of the other three, the Chicago & Northwestern reaches Milwaukee and Chicago, but not Minneapolis, by its own lines, while the Chicago, St. Paul & Omaha and the Minneapolis & St. Louis reach Minneapolis by their own lines, but not Milwaukee or Chicago.

Besides the lines above mentioned, there are other lines to Minneapolis which belong to companies not parties to this proceeding; of these the most important is the Great Northern which runs northeasterly from Sioux Falls, S. D., to the head of Lake Superior with a line to Minneapolis, crossing the lines of the defendants at numerous points.

III. The following tables show the distances and rates from various points in this territory to Milwaukee & Minneapolis, respectively. The first table of each pair shows the rates and distances from the point of view of complainant. The second of each pair shows the distances by the shortest available route in each case, which the defendants insist is the proper basis for comparison.

TABLE 1.
CHICAGO AND NORTHWESTERN.

DISTANCES.			FROM	RATES.		
To Chicago.	To Minneapolis.	Difference.		To Chicago.	Minneapolis.	Difference.
326	270	56	Council Bluffs Line.	26	15	5
330	274	56		20.5	15	5.5
335	279	56		21.5	15	6.5
340	284	56		22	15	7
363	307	56		22	15	7
370	314	56		22.5	16	6.5
379	323	56		22.5	18	4.5
339	248	91	Des Moines & Sioux City Line.	20	15	5
347	256	91		21	15	6
363	272	91		22	15	7
387	296	91		22.5	15	7.5
397	306	91		23	16	7
405	314	91		23	17	6
368	219	149	Iowa & Dakota Line.	20	15	5
376	227	149		20.5	15	5.5
385	236	149		21	15	6
397	248	149		21.5	15	6.5
403	254	149		22	15	7
412	263	149		22	16	6
420	271	149		22	16	6
427	278	149		22	16	6
436	287	149		22	16	6

DISTANCES.				FROM	RATES.		
To Milwaukee.	To Chicago.	To Minneapolis.	Difference.*		To Chicago or Milwaukee.	To Minneapolis.	Difference.
356	326	261	65	Ames,	20	15	5
360	330	265	65	Ontario,	20.5	15	5.5
365	335	270	65	Midway,	21.5	15	6.5
370	340	275	65	Boone,	22	15	7
381	352	246	106	Ogden,	22	15	7
393	363	257	106	Grand Junction,	22	15	7
399	370	264	106	Jefferson,	22.5	16	6.5
408	379	273	106	Scranton,	22.5	18	4.5
369	339	239	100	Jewel Junction,	20	15	5
377	347	247	100	Stanhope,	21	15	6
393	363	230	133	Dayton,	22	15	7
418	388	255	133	Lohrville,	22.5	15	7.5
427	397	272	125	Lake City,	23	16	7
435	405	272	133	Auburn,	23	17	6
375	369	209	160	Eagle Grove,	20	15	5
383	377	217	160	Thor,	20.5	15	5.5
392	386	192	194	Dakota City,	21	15	6
404	398	204	194	Bradgate,	21.5	15	6.5
410	404	210	194	Rolfe,	22	15	7
419	413	219	194	Havelock,	22	16	6
427	421	227	194	Laurens,	22	16	6
434	428	234	194	Marathon,	22	16	6
443	437	243	194	Sioux Rapids,	22	16	6

* Differences in distance as between Milwaukee and Minneapolis are substantially found by adding 30 miles for stations Ames to Auburn, inclusive, and 6 miles for stations Eagle Grove to Sioux Rapids, inclusive.

TABLE 2.
ILLINOIS CENTRAL.

DISTANCES.			FROM	RATES.		
To Milwaukee.	To Minneapolis.	Difference.		To Milwaukee.	To Minneapolis.	Difference.
288	198	95	Cedar Falls, Ia.	16	15	1
313	217	95	Aplington, "	17	15	2
347	252	95	Williams, "	18	15	3
353	257	95	Blairsburg, "	19	15	4
361	266	95	Webster City, "	20	15	5
381	286	95	Fort Dodge, "	22	15	7
399	304	95	Manson, "	23	17	6
415	320	95	Fonda, "	24	17	7
456	361	95	Cherokee, "	24	17	7
490	395	95	Le Mars, "	25	18	7
515	420	95	Sioux City, "	25	18	7
465	370	95	Larabee, Ia.	23	17	6
488	393	95	Archer, "	24	17	7
501	406	95	Matlock, "	25	17	8
519	424	95	Rock Rapids, "	25	17	8
544	449	95	Rowena, S. D.	25	17	8
553	458	95	Sioux Falls, "	25	17	8

DISTANCES.			FROM	RATES.		
To Milwaukee.	To Minneapolis.	Difference.		To Milwaukee.	To Minneapolis.	Difference.
288	204	84	Cedar Falls, Ia.	16	15	1
313	198	114	Aplington, "	17	15	2
347	215	132	Williams, "	18	15	3
355	223	132	Blairsburg, "	19	15	4
361	224	137	Webster City, "	20	15	5
380	211	169	Fort Dodge, "	22	15	7
399	231	168	Manson, "	23	17	5
416	246	170	Fonda, "	23	17	6
457	250	207	Cherokee, "	23	17	6
490	244	246	Le Mars, "	25	18	7
515	270	245	Sioux City, "	25	18	7
465	242	223	Larabee, Ia.	23	17	6
488	219	269	Archer, "	24	17	7
452	218	234	Matlock, "	25	17	8
468	226	242	Rock Rapids, "	25	17	8
493	249	244	Rowena, S. D.	25	18	7
503	240	263	Sioux Falls, "	25	18	7

TABLE 3.
BURLINGTON, CEDAR RAPIDS & NORTHERN.

DISTANCES.			FROM	RATES.			
To Milwaukee.	To Minneapolis.	Difference.		To Milwaukee.	To Minneapolis.	Difference.	
314	Via Vinton.	240	74	Vinton,	15	15	
330		256	74	Dysart,	16	15	1
338		264	74	Traser,	16.5	15	1.5
350		276	74	Reinbeck,	17	15	2
404	Via Dows.	190	214	Dows,	18	15	3
410		196	214	Galtville,	18	15	3
417		203	214	Clarion,	19	15	4
427		218	214	Goldfield,	20	15	5
444	Via Livermore.	182	262	Livermore,	20	15	5
460		198	262	West Bend,	21	15	6
475		213	262	Emmetsburg,	22	15	7
498		236	262	Estherville,	22	15	7
514		252	262	Spirit Lake,	22	15	7
526		264	262	Lake Park,	22	15	7
537		275	262	Ocheyedan,	24	16	8
556		294	262	Little Rock,	24	16	8
575		318	262	Rock Rapids,	25	17	8
589		327	262	Larchwood,	25	17	8
607		345	262	Sioux Falls,	25	18	7

DISTANCES.			FROM	RATES.		
To Milwaukee.	To Minneapolis.	Difference.		To Milwaukee.	To Minneapolis.	Difference.
276	239	37	Vinton,	15	15	
292	255	37	Dysart,	16	15	1
300	264	36	Traser,	16.5	15	1.5
312	219	93	Reinbeck,	17	15	2
347	191	156	Dows,	18	15	3
353	197	156	Galtville,	18	15	3
360	187	173	Clarion,	19	15	4
370	195	175	Goldfield,	20	15	5
367	182	185	Livermore,	20	15	5
391	226	165	West Bend,	21	15	6
386	190	196	Emmetsburg,	22	15	7
409	213	196	Estherville,	22	15	7
431	210	221	Spirit Lake,	22	15	7
437	196	241	Lake Park,	22	15	7
448	207	241	Ocheyedan,	24	16	8
467	204	263	Little Rock,	24	16	8
468	226	242	Rock Rapids,	25	17	8
482	240	242	Larchwood,	25	17	8
503	240	263	Sioux Falls,	25	18	7

TABLE 4.
CHICAGO, MILWAUKEE & ST. PAUL.

DISTANCES.			IA. & DAK. DIV.	RATES.		
To Milwaukee.	To Minneapolis.	Difference.		To Milwaukee.	To Minneapolis.	Difference.
812	144	168	Mason City, Ia.	17	14	3
838	165	168	Garner, "	19	15	4
848	175	168	Britt, "	20	15	5
864	196	168	Algona, "	21	15	6
888	220	168	Emmetsburg, "	22	16	6
412	244	168	Spencer, "	22	16	6
438	270	168	Sanborn, "	24	17	7
471	303	168	Rock Valley, "	25	17	8
490	322	168	Canton, S. D.	25	18	7
519	351	168	Parker, "	27	20	7
535	367	168	Freeman, "	27	21.5	5.5
546	378	168	Menno, "	27	22	4
556	388	168	Scotland, "	27.5	25	2.5
569	401	168	Tyndall, "	28	26	2
581	413	168	Springfield, "	29	26	3
587	419	168	Running Water, "	30	26	4
540	372	168	Bridgewater, "	27	20	7
570	402	168	Mitchell, "	27.5	21	6.5
598	425	168	Plankinton, "	28.5	23.5	5
617	449	168	Kimball, "	30	26	4
637	469	168	Chamberlain, "	31	27	4

DISTANCES.			FROM	RATES.		
To Milwaukee.	To Minneapolis.	Difference.		To Milwaukee.	To Minneapolis.	Difference.
305	144	161	Mason City, Ia.	17	14	3
330	157	173	Garner, "	19	15	4
341	156	185	Britt, "	20	15	5
362	166	196	Algona, "	21	15	6
386	190	196	Emmetsburg, "	22	15	7
410	214	196	Spencer, "	22	16	6
436	240	196	Sanborn, "	24	17	7
469	284	235	Rock Valley, "	25	17	8
488	254	234	Canton, S. D.	25	18	7
516	306	210	Parker, "	27	20	7
534	300	234	Freeman, "	27	21.5	5.5
544	310	234	Menno, "	27	22	4
554	320	234	Scotland, "	27.5	25	2.5
579	345	234	Springfield, "	29	26	3
567	333	234	Tyndall, "	28	26	2
586	352	234	Running Water, "	30	26	4
538	304	234	Bridgewater, "	27	20	7
529	311	218	Mitchell, "	27.5	21	6.5
591	335	256	Plankinton, "	28.5	23.5	5
615	359	256	Kimball, "	30	26	4
634	378	256	Chamberlain, "	31	27	4

TABLE 4-A.
CHICAGO, MILWAUKEE & ST. PAUL.

DISTANCES.			SO. MINN. DIV. FROM	RATES.		
To Milwau- kee.	To Minne- apolis.	Differ- ence.		To Milwau- kee.	To Minne- apolis.	Differ- ence.
305	101	204	Ramsey, Minn.	16	10	6
327	123	204	Albert Lea, "	17	11	6
332	128	204	Armstrong, "	17	11.5	5.5
342	138	204	Evans, "	19	12	7
346	142	204	Wells, "	20	12	8
363	159	204	Mapleton, "	20	12	8
368	164	204	Winnebago City, "	22	13	9
385	181	204	Fairmont, "	23	15	7
411	207	204	Jackson, "	23	15	8
448	244	204	Fulda, "	24	15.5	8.5
477	273	204	Edgerton, "	25	17	8
491	287	204	Pipestone, "	25	17	8
520	316	204	Colman, S. D.	27	18	9
536	332	204	Madison, "	27	20	7
557	353	204	Howard, "	27	20.5	6.5
577	373	204	Artesian, "	27	21	6
596	392	204	Woonsocket, "	27	21	6

DISTANCES.			FROM	RATES.		
To Milwau- kee.	To Minne- apolis.	Differ- ence.		To Milwau- kee.	To Minne- apolis.	Differ- ence.
305	101	204	Ramsey, Minn.	16	10	6
316	108	208	Albert Lea, "	17	11	6
332	113	219	Armstrong, "	17	11.5	5.5
337	118	219	Evans, "	19	12	7
346	123	223	Wells, "	20	12	8
371	123	248	Winnebago City, "	22	13	9
385	140	245	Fairmont, "	22	15	7
411	166	245	Jackson, "	23	15	8
448	177	271	Fulda, "	24	15.5	8.5
477	206	271	Edgerton, "	25	17	8
494	208	286	Pipestone, "	25	17	8
520	237	283	Colman, S. D.	27	18	9
536	253	283	Madison, "	27	20	7
557	274	283	Howard, "	27	20.5	6.5
577	294	283	Artesian, "	27	21	6
596	313	283	Woonsocket, "	27	21	6

The places named in the foregoing tables are only a few of the shipping stations in the territory in question, but, taken in connection with the distances and rates stated and comparisons made, they serve to illustrate the general situation.

In table 1 (Chicago & Northwestern), Ames, Ia., is the station nearest to Milwaukee, all other stations named therein being west and northwesterly from Ames and more distant from Milwaukee. For this table complainant used distances to Chicago—the mileage to that city being generally less over this road than to Milwaukee—and claimed that the use of the Chicago distance in this case was justified by the fact that Chicago and Milwaukee take the same rates. This claim is disputed by defendants, and in that part of the table constructed according to their theory of short-line distances, the short mileage to Milwaukee, as shown in one of their exhibits, is also given.

In table 2 (Illinois Central), Cedar Falls, Ia., is the station nearest Milwaukee, and all other stations shown are to the west and northwest of that point, ending with Sioux City, Ia., and Sioux Falls, S. D., the termini of forks or branches diverging at Cherokee, Ia.

In table 3 (Burlington, Cedar Rapids & Northern), the first station shown from Milwaukee is Vinton, Ia., and the others are on the line running westerly from Vinton and ending with Sioux Falls, S. D.

Table 4 shows stations on the Iowa and Dakota division of the Chicago, Milwaukee & St. Paul Railway from Mason City, Ia., west and slightly northwest to Chamberlain, S. D., including a short branch in South Dakota to Running Water. And table 4—a stations are those on the Southern Minnesota division of the Chicago, Milwaukee & St. Paul Railway commencing with Ramsey, Minn., almost directly north of Mason City, and ending with Woonsocket, S. D. This line lies more to the north than those covered by the other tables, running about due west from La Crosse, Wis., and appears to be somewhat south of midway between the latitudes of Minneapolis and Milwaukee.

All of the stations named in the tables are situated, as above shown, on east and west lines. These are intersected at various junctions by north and south lines, and are so located with reference to the latter that it is practicable to form routes from the

stations named which are frequently much shorter to Minneapolis than the routes over which the traffic is carried by defendants. The east and west roads intersect, in some cases by their main lines but in most instances by branches from main lines, and thus in various ways routes to Milwaukee may be formed which are shorter than those over which the traffic is carried by defendants. This accounts for the different distances given in the tables of complainant (actual routes) and those of defendants (short lines).

The rates set forth in each of the tables are substantially the same. These rates were apparently in force when the complaint was filed, were used and relied upon by both sides at the hearing, and while numerous slight changes have since been made in the rates in force to both cities, resulting also in some variation of particular differentials, it is not understood that such changes have materially altered the general relation of rates in question.

IV. Some of the rates to Milwaukee are greater than those charged for similar distances to Minneapolis; on the other hand, instances are found in the tables where rates to Milwaukee are less for a given distance than those in force for like distance to Minneapolis. While many of the rates to Milwaukee increase by a greater amount for a given increase of distance than do the rates to Minneapolis for a like increase of distance, such instances are comparatively few when defendants' short-line distances are used.

V. The differentials are all in favor of Minneapolis and against Milwaukee, and in each case the distance is greater to Milwaukee; but such differentials vary widely for like differences in distances, by either actual or short-line mileage, and the rates do not appear to have been established with a view to any consistent relation or, so far as can be discovered, according to any general plan.

On the Chicago & Northwestern (table 1) for an equal difference in distance of 56 miles by actual routes from 7 stations, the differentials vary from $4\frac{1}{2}$ to 7 cents; for a difference of 91 miles from 6 stations, from 5 to $7\frac{1}{2}$ cents; for a difference of 149 miles from 9 stations, from 5 to $6\frac{1}{2}$ cents. By the short-line comparison, for a difference of 65 miles from 4 stations, the differentials range from 5 to 7 cents; for a difference of 106 miles from 4 stations, from $4\frac{1}{2}$ to 7 cents; for a difference of 133 miles from 3 stations, from 6 to $7\frac{1}{2}$ cents; for a difference of 194 miles from 7 stations, from 6 to 7 cents. The instances are numerous where

from two stations near each other, and from which the difference in distance to Milwaukee and Minneapolis is the same, the differentials are not the same; thus, Eagle Grove and Thor, differentials, 5 and $5\frac{1}{2}$ cents; Jefferson and Scranton, differentials, $4\frac{1}{2}$ and $6\frac{1}{2}$ cents; Jewel Junction and Stanhope, differentials, 5 and 6 cents. The differences in distance here used are based on those mentioned in the table; using the Milwaukee short-line distance would merely increase the difference in distance without otherwise affecting the finding.

On the Illinois Central (table 2), by complainants' actual routes from each of the 17 stations, the difference in distance to Minneapolis and Milwaukee is 95 miles, but the differentials in favor of Minneapolis vary from 1 to 8 cents. In defendants' short-line statement are found differentials of 3 and 4 cents for a difference in distance of 132 miles at Williams and Blairsburg, Ia., 8 miles apart; and differentials of 7 and 5 cents at Fort Dodge and Manson, Ia., 20 miles apart, but with a difference in distance from Milwaukee and Minneapolis of 169 miles at Fort Dodge and 168 miles at Manson. Fonda, with a difference in distance of 170 miles, and Cherokee, Ia., with a difference in distance of 207 miles, take the same differential, 6 cents. With distance differences of 234 and 242 miles at Matlock and Rock Rapids, S. D., the differential is 8 cents, and for distance differences at Archer, Ia., and Sioux Falls, S. D., of 269 and 263 miles the differential at each is 7 cents. As above stated, Fort Dodge, Ia., difference in distance 169 miles, also has a 7-cent higher rate to Milwaukee than to Minneapolis.

On the Burlington, Cedar Rapids & Northern (table 3), for an equal difference in distance of 74 miles by actual routes from 4 stations, there is no rate differential at one point, at another the differential reaches 2 cents, and at the other two stations it is 1 and $1\frac{1}{2}$ cents. Four stations, distance differences, 214 miles, have rate differentials ranging from 3 to 5 cents; and at 11 others, difference in distance 262 miles, the lowest differential rate is 5 cents and the highest 8 cents. On the short-line distances there are differences in distance of 268, 241, 221 and 196 miles, with a 7 cent differential; 263, 242 and 241 miles difference with an 8 cent differential; a rate differential of 6 cents for 165 miles distance difference and a rate differential of 5 cents for 185 miles

difference in the two distances. The differentials are 4 and 5 cents, respectively, at Clarion and Goldfield, Ia., though the differences in distances are as nearly alike as 173 and 175 miles. Again, for 156 miles distance difference there is a rate difference of 3 cents, while for a mileage difference of 165 miles there is a differential of 6 cents.

On the Chicago, Milwaukee & St. Paul (table 4), the differentials against Milwaukee range from 3 to 8 cents from the 21 stations mentioned, although by complainants' statement of lines the difference between the distances from each of the points to Milwaukee and Minneapolis is 168 miles. By the short mileage, for a difference in distance of 196 miles from 4 stations, the difference in rates is 6 and 7 cents; and from 3 other stations where the difference in distance is 256 miles, the rate differentials are 4 and 5 cents. From 8 stations, difference in distance 234 miles, the difference in rates varies from 2 to 7 cents. With difference of 235 miles in the distance there is an 8 cent differential. At Mason City, Ia., difference in distance 161 miles, the difference in rates is 3 cents, while at Scotland, S. D., difference in distance 234 miles, the rate differential is 2 cents.

On the Southern Minnesota division of the same railway (table 4-a), 17 stations, Ramsey, Minn., to Woonsocket, S. D., inclusive, equal difference in distance of 204 miles by actual routes, differentials are provided of from $5\frac{1}{2}$ at Armstrong, Minn., to 9 cents at Colman, S. D., while Ramsey and Woonsocket, 291 miles apart, have the same differential of 6 cents. The short-line distances given show differences in distance to Milwaukee and Minneapolis of from 204 to 283 miles, with the above stated variation in rate differentials of from $5\frac{1}{2}$ to 9 cents. With 283 miles difference in distance from 5 stations the rate differentials are 6, $6\frac{1}{2}$, 7 and 9 cents; and with distance differences of 271, 271, 245, 245, 248, 223, 219, and 219 miles, the rate differentials are, respectively, 8, $8\frac{1}{2}$, 8, 7, 8, 8, 7 and $5\frac{1}{2}$ cents.

VI. The defendants, the Chicago, Milwaukee & St. Paul, Chicago & Northwestern, Burlington, Cedar Rapids & Northern and the Illinois Central, have in effect local interstate distance tariffs between stations in Minnesota and stations in Iowa; and the Illinois Central and Burlington, Cedar Rapids & Northern tariffs also apply between points in those states and stations in South Dakota. The tariffs of the two companies last named

differ from each other, and each is also at variance with those of the Chicago & Northwestern and Chicago, Milwaukee & St. Paul, but all are constructed according to a general plan of increased rates for each additional 5, 10, or 20 miles, as they may respectively provide.

Variations between these four distance tariffs are shown as follows:

Miles....	160	200	240	280	320	360	400	440	480	520
RATES.										
C. & N. W.....	15.5	17.5	18.5	19.5	20.5	21.5	22.5	23.5	24.5	25.5
C., M. & St. P....	15.5	17.5	18.5	19.5	20.5	21.5	22.5	23.5	24.5	25.5
B., C. R. & N....	16.5	18.5	20.5	22.5	23.5	24.5	25	26	26.5	27
Ill. Central	14	16	17.6	18.6	19.4	20.2	21	21.8	22.6	23.4

VII. Applying such local interstate distance tariff of the Chicago and Northwestern system to Milwaukee and Minneapolis from the stations named in table 1, and using the short-line distances stated by defendants, gives the following result:

	To MILWAUKEE.		To MINNEAPOLIS.		Dist. Tariff Differ- ential.
	Dist.	Dist. Tariff Rate.	Dist.	Dist. Tariff Rate.	
<i>Council Bluffs Line.</i>					
Ames	856	21.5	261	19	2.5
Ontario	860	21.5	265	19	2.5
Midway	865	21.5	270	19.5	2
Boone	370	22	275	19.5	2.5
Ogden	381	22	246	18.5	3.5
Grand Junction	393	22.5	257	19	3.5
Jefferson	399	22.5	264	19	3.5
Scranton	408	22.5	273	19.5	3
<i>Des Moines & Sioux City Line.</i>					
Jewel Junction	369	21.5	239	18.5	3
Stanhope	377	22	247	18.5	3.5
Dayton	393	22.5	230	18	4.5
Lohrville	418	23	255	19	4
Lake City	427	23	272	19.5	3.5
Auburn	435	23.5	273	19.5	4
<i>Iowa & Dakota Line.</i>					
Eagle Grove	375	23	209	17.5	4.5
Thor	383	23	217	17.5	4.5
Dakota City	393	22.5	192	17.5	4.5
Bradgate	404	22.5	204	17.5	4.5
Rolfe	410	22.5	210	17.5	4.5
Havelock	419	23	219	18	5
Laurens	427	23	227	18	5
Marathon	434	23.5	234	18.5	5
Sioux Rapids	443	23.5	243	18.5	5

The local-distance tariff of the Illinois Central applied in like manner from the stations named in table 2 results as follows:

	TO MILWAUKEE.		TO MINNEAPOLIS		Dist. Tariff Differ- ential.
	Dist.	Dist. Tariff Rate.	Dist.	Dist. Tariff Rate.	
Cedar Falls.....	288	18.8	204	16.4	2.4
Aplington.....	312	19.2	198	16	3.2
Williams.....	347	20	215	16.4	3.6
Blairsburg.....	355	20	223	16.8	3.2
Webster City.....	361	20.2	224	16.8	3.4
Fort Dodge.....	380	20.6	211	16.4	4.2
Manson.....	399	21	231	17.2	3.8
Fonda.....	416	21.4	246	18	3.4
Cherokee.....	457	22.2	250	18	4.2
Le Mars.....	490	22.6	244	17.6	5
Sioux City.....	515	23.4	270	18.4	5
Larabee.....	465	22.2	242	17.6	4.6
Archer.....	488	22.6	219	16.8	5.8
Matlock.....	452	22.2	218	16.8	5.4
Rock Rapids.....	463	22.2	226	17.2	5
Rowena.....	493	23	249	18	5
Sioux Falls.....	503	23	240	17.6	5.4

The distance tariff of the Burlington, Cedar Rapids & Northern Railway is applied over short-line mileage for stations named in table 3 in the following statement:

	TO MILWAUKEE.		TO MINNEAPOLIS.		Dist. Tariff Differ- ential.
	Dist.	Dist. Tariff Rate.	Dist.	Dist. Tariff Rate.	
Vinton.....	276	22.5	239	20.5	2
Dysart.....	292	22.5	255	21.5	1
Traser.....	300	23	264	21.5	1.5
Reinbeck.....	312	23.5	219	19.5	4
Dows.....	347	24	191	18.5	5.5
Galtville.....	353	24	197	18.5	5.5
Clarion.....	360	24.5	187	18	5.5
Goldfield.....	370	24.5	195	18.5	5.5
Livermore.....	367	24.5	182	18	6
West Bend.....	391	25	228	20	5
Emmetsburg.....	386	25	190	18	7
Estherville.....	409	25	218	19	6
Spirit Lake.....	431	25.5	210	19	6.5
Lake Park.....	437	26	196	18.5	7.5
Ocheyedan.....	448	26	207	19	7
Little Rock.....	467	26	204	18.5	7.5
Rock Rapids.....	468	26	226	20	6
Larchwood.....	482	26.5	240	20.5	6
Sioux Falls.....	503	27	240	20.5	6.5

Using the distance tariff of the Chicago, Milwaukee & St. Paul for stations named in table 4, the Iowa and Dakota division of

this system, produces the following figures based on short-line mileage:

	TO MILWAUKEE.		TO MINNEAPOLIS.		Dist. Tariff Differ- ential.
	Dist.	Dist. Tariff Rate.	Dist.	Dist. Tariff Rate.	
Mason City	305	30	144	15	5
Garner	330	31	157	15.5	5.5
Britt	341	31	156	15.5	5.5
Algona	363	31.5	166	16	5.5
Emmetsburg	386	32	190	17	5
Spencer	410	33	214	18	5
Sanborn	436	33.5	240	18.5	5
Rock Valley	469	34	234	18.5	5.5
Canton	488	34.5	254	19	5.5
Parker	516	35.5	306	20	5.5
Freeman	534	36	300	20	6
Menno	544	36	310	20.5	5.5
Scotland	554	36.5	320	20.5	6
Springfield	579	37	345	21	6
Tyndall	567	36.5	333	21	5.5
Running Water	586	37	353	21.5	5.5
Bridgewater	588	36	304	20	6
Mitchell	529	36	311	20.5	5.5
Plankinton	591	37.5	335	21	6.5
Kimball	615	38	359	21.5	6.5
Chamberlain	634	38.5	378	22	6.5

Using the same distance tariff for short-line distances from stations on the Southern Minnesota division of the Chicago, Milwaukee & St. Paul (table 4-a) gives the following figures:

	TO MILWAUKEE.		TO MINNEAPOLIS.		Dist. Tariff Differ- ential.
	Dist.	Dist. Tariff Rate.	Dist.	Dist. Tariff Rate.	
Ramsey	305	20	101	18	7
Albert Lea	316	20.5	108	18	7.5
Armstrong	332	21	118	18.5	7.5
Evans	337	21	118	18.5	7.5
Wells	346	21	123	14	7
Winnebago City	371	22	123	14	8
Fairmont	385	22	140	14.5	7.5
Jackson	411	23	166	16	7
Fulda	448	23.5	177	16.5	7
Edgerton	477	24.5	206	17.5	7
Pipestone	494	25	208	17.5	7.5
Colman	520	25.5	237	18.5	7
Madison	533	26	253	19	7
Howard	557	26.5	274	19.5	7
Artesian	577	27	294	20	7
Woonsocket	596	27.5	313	20.5	7

VIII. The differentials provided by using the distance tariffs of the Burlington, Cedar Rapids & Northern and the Illinois Central for Rock Rapids and Sioux Falls, served by both lines, are 6 and 5 cents respectively at Rock Rapids, and 6.5 and 5.4 cents respectively at Sioux Falls. At Emmetsburg, another junction, distance tariff differentials of the Chicago, Milwaukee & St. Paul and the Burlington, Cedar Rapids & Northern are 5 cents by the C., M. & St. P. and 7 cents by the B. C. R. & N.

Using the C., M. & St. P. distance tariff, which is practically the same as that of the Chicago & Northwestern, on the other two roads would somewhat increase the distance tariff differentials shown above for the Illinois Central and work a decrease in the distance tariff differentials of the Burlington, Cedar Rapids & Northern; but if short-line distances are to govern the rates rather than actual distances over the lines carrying the traffic, it is requisite that a common basis of arriving at the differentials should be employed.

IX. Differentials based according to the C., M. & St. P. distance tariff (which results practically the same as that of the Northwestern), and the present differentials as shown in the foregoing tables for the several lines, are compared below in the order of actual distances, commencing with the station nearest to Milwaukee:

TABLE 1 (C. & N. W.) STATIONS.

Differentials.	Council Bluffs Line.								D. M. & Sioux City Line.						Ia. & Dak. Line.								
Present.	5	5½	6½	7	7	7	6½	4½	5	6	7	7½	7	6	5	5½	6	6½	7	6	6	6	6
Distance Tariff.	2½	2½	2	2½	3½	3½	3½	3	3	3½	4½	4	3½	4	4½	4½	4½	4½	4½	5	5	5	5

TABLE 2 (ILL. CENT.) STATIONS.

Differentials.	Sioux City Line.											Sioux Falls Line.					
Present.	1	2	3	4	5	7	5	6	6	7	7	6	7	8	8	7	7
Distance Tariff.	2	2	3	3½	3½	4	4	4½	5	6½	6	5½	7	6	6	6½	6½

TABLE 3 (B. C. R. & N.) STATIONS.

Differentials.	Vinton to Sioux Falls.																
Present.	0	1	1½	2	3	3	4	5	5	6	7	7	7	7	8	8	8
Distance Tariff.	1	1	1	2½	3½	4	4½	4½	5	4½	5	4½	5½	6	6	6½	6½

TABLE 4 (CHIC., MIL. & ST. P.) STATIONS.

Differentials.	IOWA & DAKOTA DIVISION.																To Chamberlain.				
	To Running Water.																				
	3	4	5	6	7	6	7	8	7	7	5½	4	2½	3	2	4					
Present.	3	4	5	6	7	6	7	8	7	7	5½	4	2½	3	2	4	7	6½	5	4	4
Distance Tariff.	5	5½	5½	5½	5	5	5	5½	5½	5½	6	5½	6	6	5½	5½	6	5½	6½	6½	6½

TABLE 4-a (CHIC., MIL. & ST. P.) STATIONS.

Differentials.	SOUTHERN MINNESOTA DIVISION.															
Present.	6	6	5½	7	8	9	7	8	8½	8	9	7	6½	6	6	
Distance Tariff.	7	7½	7½	7½	7	8	7½	7	7	7	7½	7	7	7	7	

X. Adding these distance tariff differentials to the rates to Minneapolis, to make Milwaukee rates, would produce the relative rates to both cities shown below. Stations are named in order of nearest distance on same line to Milwaukee, and for convenient comparison rates to Milwaukee are also given :

CHICAGO & NORTHWESTERN.

	To MILWAUKEE.		To MINNEAPOLIS
	Rates.	Distance Differential Rates.	Rates.
COUNCIL BLUFFS LINE.			
Ames.....	20	17½	15
Ontario.....	20½	17½	15
Midway.....	21½	17	15
Boone.....	22	17½	15
Ogden.....	22	18½	15
Grand Junction.....	22	18½	15
Jefferson.....	22½	19½	16
Scranton.....	22½	21½	18
DES MOINES & SIOUX CITY LINE.			
Jewel Junction.....	20	18	15
Stanhope.....	21	18½	15
Dayton.....	22	19½	15
Lohrville.....	22½	19	15
Lake City.....	23	19½	16
Auburn.....	23	21	17
IOWA-DAKOTA LINE.			
Eagle Grove.....	20	19½	15
Thor.....	20½	19½	15
Dakota City.....	21	19½	15
Bradgate.....	21½	19½	15
Rolfe.....	22	19½	15
Havelock.....	22	21	16
Laurens.....	22	21	16
Marathon.....	22	21	16
Sioux Rapids.....	22	21	16

ILLINOIS CENTRAL.

	To MILWAUKEE.		To MINNEAPOLIS.
	Rates.	Distance Differential Rates.	Rates.
Cedar Falls	16	17	15
Aplington	17	17	15
Williams	18	18	15
Blairsburg	19	18½	15
Webster City	20	18½	15
Fort Dodge	22	19	15
Manson	22	21	17
Fonda	23	21½	17
Cherokee	23	22	17
Le Mars	25	24½	18
Sioux City	25	24	18
Larabee	23	22½	17
Archer	24	24	17
Matlock	25	23	17
Rock Rapids	25	23	17
Rowena	25	24½	18
Sioux Falls	25	24½	18

BURLINGTON, CEDAR RAPIDS & NORTHERN.

	To MILWAUKEE.		To MINNEAPOLIS.
	Rates.	Distance Differential Rates.	Rates.
Vinton	15	16	15
Dysart	16	16	15
Traser	16½	16	15
Reinbeck	17	17½	15
Dows	18	18½	15
Galtville	18	19	15
Clarion	19	19½	15
Goldfield	20	19½	15
Livermore	20	20	15
West Bend	21	19½	15
Emmetsburg	22	20	15
Estherville	22	19½	15
Spirit Lake	22	20½	15
Lake Park	22	21	15
Ocheyedan	24	23	16
Little Rock	24	22½	16
Rock Rapids	25	23	17
Larchwood	25	23	17
Sioux Falls	25	24½	18

CHICAGO, MILWAUKEE & ST. PAUL.

	To MILWAUKEE.		To MINNEAPOLIS.
	Rates.	'Distance Differential Rates.	Rates.
IOWA & DAKOTA DIVISION.			
Mason City.....	17	19	14
Garner	19	20½	15
Britt	20	20½	15
Algona	21	20½	15
Emmetsburg	22	20	15
Spencer.....	22	21	16
Sanborn	24	22	17
Rock Valley.....	25	22½	17
Canton	25	23½	18
Parker.....	27	25½	20
Freeman	27	27½	21½
Menno.....	27	28½	23
Scotland	27½	31	25
Springfield.....	29	32	26
Tyndall.....	28	31½	26
Running Water.....	30	31½	26
Bridgewater	27	26	20
Mitchell	27½	26½	21
Plankinton.....	28½	29½	23½
Kimball	30	32½	26
Chamberlain	31	33½	27
SOUTHERN MINNESOTA DIV.			
Ramsey	16	17	10
Albert Lea.....	17	18½	11
Armstrong.....	17	19	11½
Evans	19	19½	12
Wells	20	19	12
Winnebago City	22	21	13
Fairmont	22	22½	15
Jackson	23	22	15
Fulda	24	22½	15½
Edgerton	25	24	17
Pipestone	25	24½	17
Colman	27	25	18
Madison	27	27	20
Howard	27	27½	20½
Artesian	27	28	21
Woonsocket.....	27	28	21

XI. Under the distance tariffs, where the difference in distance as shown in the short-line tables is the same for several stations, the rates so produced, and consequently the differentials thereby obtained, may vary somewhat because the distances used are

multiples of 10 or 20 miles, and because the distance tariff contains substantially the following rule: For distances under 200 miles when the exact distance is not shown in the tariff, use the next greater distance and rates—For over 200 miles, use the nearest distance named in the tariff—Where the distance for which the rate is desired is midway between distances stated in the tariff, use the next greater distance. Under this rule a slight variation in the distance may cause a change in the rate. These considerations, together with the fact that the stated short-line distances do not invariably increase with distance over the particular defendant line, account for the various lower longer-distance rates produced by applying the distance tariff.

XII. On the Chicago & Northwestern there are substantially only five differences in distance as between the two destination points: 65, 106, 133, 160, and 194 miles, affording common differentials in rates based on the distance tariff of, respectively, $2\frac{1}{2}$ cents, Ames to Boone, inclusive; $3\frac{1}{2}$ cents, Ogden to Stanhope, inclusive; 4 cents, Dayton to Auburn, inclusive; $4\frac{1}{2}$ cents, Eagle Grove and Thor; and $4\frac{1}{2}$ cents, Dakota City to Sioux Rapids, inclusive. This discards any higher differential for like differences in distance.

On the Illinois Central, combining stations from which the differences in distance to the two cities are not greatly at variance and having due regard to differentials shown by the distance tariff, gives a 2 cent differential at Cedar Falls and Aplington; a 3 cent differential at Williams, Blairsburg and Webster City; a 4 cent differential Fort Dodge to Fonda; a $4\frac{1}{2}$ cent differential Cherokee to Larabee; a 6 cent differential beyond Larabee to and including Rowena; and $6\frac{1}{2}$ cents at Sioux Falls. On the Sioux City Line for Cherokee the indicated differential is 6 cents.

On the Burlington, Cedar Rapids & Northern, following the same course, there would result differentials of 1 cent, Vinton to Traser; $2\frac{1}{2}$ cents at Reinbeck; $3\frac{1}{2}$ cents at Dows and Galtville; $4\frac{1}{2}$ cents, Clarion to Estherville, inclusive; $5\frac{1}{2}$ cents at Spirit Lake; 6 cents, Lake Park to Larchwood; and $6\frac{1}{2}$ cents at Sioux Falls.

On the Iowa and Dakota Division of the Chicago, Milwaukee & St. Paul, there are a number of stations from which the differences in distance are substantially the same, and the

following differentials would result: 5 cents, Mason City to Sanborn, inclusive; $5\frac{1}{2}$ cents, Rock Valley, *via* Parker to Running Water, and to Mitchell, inclusive; Plankinton, Kimball, and Chamberlain, 6 cents.

On the Southern Minnesota Division of the Chicago, Milwaukee & St. Paul, there are also various stations with like differences in distance to the two destinations, but the distance tariff gives as low a differential for Woonsocket, the most distant station, as for Ramsey, the nearest shipping point, and several other intermediate stations would also have a like relation under that tariff, thus indicating that all the stations on that division should have the same differential, namely 7 cents.

These figures may not be entirely accurate in every instance, but they illustrate the change in differentials which would be produced by applying the interstate distance tariffs of the Milwaukee and Northwestern systems to the short-line mileage from various points of wheat production to the two cities in question.

XIII. There are a number of places from which the rates of the defendants, or some of them, are higher on wheat than on flour. These places are all nearly south of Minneapolis, the most southerly being Marble Rock in Iowa, a little south of the latitude of Milwaukee, and they are situated in a territory extending some 50 or 60 miles from east to west. There is nothing to indicate that this lower rate on flour is any advantage to Minneapolis, but it appears to be in a greater or less degree prejudicial to Milwaukee.

XIV. The State of Wisconsin was formerly a great wheat-producing region, but in more recent years it has become a relatively less important factor in the wheat supply of Milwaukee. With the development of that section of the country the wheat-growing area has rapidly extended to the west and north, and is now located—so far as concerns the controversy in this case—in the territory west of the Mississippi River. The districts lying west and north of Minneapolis have greatly increased in importance as sources of wheat supply for Minneapolis and Lake Superior ports, and even Milwaukee has come to be largely dependent upon wheat raised north of the State of Iowa. So far as this change has brought Minneapolis relatively nearer to the principal centers of wheat production, it has resulted in an advantage of location which that city is entitled to enjoy.

The amount of flour produced at Minneapolis and Milwaukee respectively for a series of years beginning with 1887, and their relative importance in the production of this commodity, are shown by the following statement:

Year.	PRODUCTION IN BBL'S.		Percentage of Milwaukee production to that of Minneapolis.
	Milwaukee.	Minneapolis.	
1887,	1,214,648	6,574,900	18.5
1888,	1,425,258	7,056,680	20.1
1889,	1,266,226	6,068,805	20.7
1890,	1,397,039	6,988,830	20
1891,	1,826,758	7,877,984	23.2
1892,	2,117,009	9,750,470	21.7
1893,	1,850,823	9,377,635	19.7
1894,	1,576,058	9,400,535	16.7
1895,	1,532,510	10,581,635	14.5

It appears from these figures that the flour output of Milwaukee as compared with that of Minneapolis has considerably fallen off, especially in the last two or three years. While other causes have doubtless contributed to this result, the inference is fairly warranted that the relatively diminishing product of Milwaukee is due in some measure to the relative rates on wheat which, as between the two cities, is not altogether just to Milwaukee.

XV. The foregoing statement and analysis of facts in this case justify the further finding that the rates under consideration—in some instances and in varying degrees from different points—unjustly discriminate against and are unduly prejudicial to Milwaukee. The extent to which these rates are found to be unlawful, and the principle or basis upon which we believe they should be readjusted, will be presently indicated.

It is not deemed necessary to make any findings as to through rates on wheat and flour to the Atlantic seaboard. The lines carrying traffic from Milwaukee and Minneapolis to eastern destinations are not parties to this proceeding, and it is not perceived that such through rates have any material bearing upon the matters now open to determination.

The conclusions to which we are led by a consideration of these facts may be briefly stated. In our judgment the comparative

reasonableness of rates to Milwaukee and Minneapolis, so far as distance is controlling, should be tested by distance over the shortest available routes, rather than those over which the traffic is or may be actually carried; and upon this point the position of the defendants is sustained. It seems plain that the effective distance of any market from a given point of supply is the shortest distance by which that market can be reached by existing and practicable lines of transportation. For example, the distance from Sioux Falls to Minneapolis by the shortest available route is 240 miles as against 503 miles by the most direct line to Milwaukee. The fact that more or less wheat is hauled from Sioux Falls to Minneapolis over a circuitous route of 458 miles does not increase the commercial distance between the two places, nor should it deprive Minneapolis of its relative nearness to Sioux Falls.

The complainant, however, argues with much earnestness that if carriers operating a circuitous route elect to compete with carriers having a direct route, the rates which the former make to engage in such competition (meaning thereby, as we understand, the rates per ton per mile) constitute a rule or basis of rate-making to which their other rates should conform. It seems a sufficient answer to this contention to point out that, if such a rule were applied, the result would be either (1) to put a stop to the competition of the longer routes against the shorter, which would deprive many shippers of the choice of carriers and of markets, or (2) if the competition (in this case) of the longer routes continued at the rates fixed by the short lines to Minneapolis, and the rates to Milwaukee were brought into adjustment with them by reduction, the effect would be to give Milwaukee an advantage which is not justified by its relative distance from the points of wheat production.

On this branch of the case we feel warranted in holding that for the purpose of comparing differentials in rates from the same place of shipment to two different markets, situated as are Milwaukee and Minneapolis with reference to the various sources of wheat supply in question, the distances by the shortest available routes are the proper distances on which to base the comparison.

This conclusion, however, does not wholly remove the grounds of complaint in this case. Tested by short-line mileage the ex-

isting differentials in many instances are unfair to Milwaukee and give an undue preference to Minneapolis. This seems manifest from an examination of the findings. Whatever may have been the origin of these differentials they do not appear to be arranged upon any intelligible plan, nor do they accord with the theory advanced by defendants. They are frequently inconsistent with each other, and there is no explanation of the varying and sometimes surprising differences in rates for practically the same differences in distance. We think that relative justice to Milwaukee requires some readjustment of these rates, and that such a readjustment can be made without hardship to the carriers and without serious disturbance of the relations between the various lines interested in this traffic.

For this purpose we believe that the distance tariffs now in use by the defendants furnish a reasonable and practicable basis. Unless there is some objection not disclosed by the record, and not otherwise brought to our attention, we see no reason why these distance tariffs—applied to short-line mileage from the various shipping points to Milwaukee and Minneapolis—would not result in fair and just differentials. The findings show how this rule would operate at the stations named and indicate the changes that would be effected by its general application.

It is not proposed that these distance tariffs shall be used for the purpose of making *rates* either to Milwaukee or Minneapolis, but only for the purpose of providing equitable differentials. The addition to the present Minneapolis rates from the various points in question of just and reasonable differentials would give just and reasonable rates for Milwaukee. There may be special conditions not perceived by us which would prevent the adoption of this rule in some cases, but from the facts and circumstances now within our knowledge it seems a just and feasible basis of readjustment.

We are of the opinion, however, that such a readjustment should be confined to the territory south of, but including the various points on, the Southern Minnesota division of the Chicago, Milwaukee & St. Paul system. This is partly because the complaint has been conditionally withdrawn since the hearing as to points lying north of the line mentioned, but more especially for the reason that otherwise there might be some conflict or inter-

ference with the rates established under a decision of the Commission respecting relative rates on wheat to Minneapolis and Duluth. (*Chamber of Commerce of Minneapolis v. Great Northern R. Co.* 5 I. C. C. Rep. 571, 4 Inters. Com. Rep. 230.) The readjustment which resulted from that proceeding appears to have been fairly satisfactory to the carriers and localities concerned and should not be disturbed by any ruling in this case.

There is an underlying feature of this controversy which we have not overlooked. The competition between places and between carriers throughout the whole territory in question is of a double character. Minneapolis has various railroads reaching into this wheat producing region which are competing with each other. Milwaukee has various railroads leading into the same region which likewise compete with each other. Besides this ordinary form of railroad competition, there is competition between the railroads as a whole that lead to Minneapolis on the one hand and those on the other hand that lead to Milwaukee. The effects of this latter competition are apparent in this case. The elements of the group of roads leading to Minneapolis (except the Chicago, Milwaukee & St. Paul) have no direct interest in and owe no duty to Milwaukee; and with the same exception the roads leading to Milwaukee have no direct interest in and owe no duty to Minneapolis. The Burlington, Cedar Rapids & Northern has an interest in both places though it reaches neither of them. Between the two groups, considering each as a whole, there is a clear diversity of interest. It is obvious that any reduction of rates by the carriers to Milwaukee can be met by a corresponding reduction by the carriers to Minneapolis. In other words, the latter have it in their power, if they see fit, to maintain the present differentials because they are legally free to make the same changes in Minneapolis rates as the former may make in Milwaukee rates.

Nevertheless we conceive it to be our duty, if convinced that justice so requires, to condemn the present relation of rates between these cities, and to indicate the basis upon which, in our judgment, those rates should be readjusted. This we have done in the facts found and views expressed in this report, which may be summarized as follows:

That the differentials now maintained—in many instances and in varying degrees at different points—give Minneapolis an undue and unreasonable preference and advantage, and subject Milwaukee to undue and unreasonable prejudice and disadvantage.

That just and reasonable differentials would be obtained by applying the interstate distance tariffs of the defendants to the short-line mileage from the several points of shipment to Milwaukee and Minneapolis, respectively. For this purpose, and because a uniform basis seems to be necessary, the distance tariffs of the Chicago & Northwestern and Chicago, Milwaukee & St. Paul roads (which are practically identical) should be used by all the defendants.

That just and reasonable rates to Milwaukee would be made by adding the differentials so obtained to the rates from time to time in force to Minneapolis, and that any higher rates to Milwaukee would be relatively unjust and unreasonable to that city.

That such differentials and rates should be made and applied from the various shipping points on and south of the Southern Minnesota division of the Chicago, Milwaukee & St. Paul road.

That such readjustment of differentials and rates should apply to the transportation of wheat and other kinds of grain from the several points in the territory last above mentioned to Minneapolis and Milwaukee.

That the charging of a higher rate on wheat than on flour, for the same distance and over the same line, is an unjust discrimination, and that the tariffs of the defendants should be revised, as may be necessary, so that the rates on wheat shall not in any case between the same points and on the same line, exceed the rates on flour.

But under such circumstances as are disclosed in this case the authority of the Commission, as that authority has been defined and restricted by the Supreme Court, does not permit us to require the affirmative action contemplated in the foregoing summary. We can only adjudge and determine that the rates now maintained by the defendant carriers, based on existing differentials, for the transportation of wheat and other grains from points on and south of the southern Minnesota division of

the Chicago, Milwaukee & St. Paul Railway to the city of Milwaukee, so far as such rates conflict with the views expressed in this report and opinion, are unjust and unreasonable as compared with rates on like traffic from the same territory to the city of Minneapolis, and give undue and unreasonable preference and advantage to Minneapolis and subject Milwaukee to undue and unreasonable prejudice and disadvantage; that the charging in any case of a higher rate on wheat than on flour between the same points and on the same line is unjust discrimination and unlawful; and that the defendant carriers cease and desist from charging, collecting or receiving the rates herein and hereby held and declared unjust and unlawful within a reasonable time from this date, and not later than the first day of March, 1898.

An order will be entered accordingly.

CATTLE RAISERS' ASSOCIATION OF TEXAS

v.

FORT WORTH & DENVER CITY RAILWAY COMPANY and Others.

Decided January 20, 1898.

1. The Chicago Live Stock Exchange, a corporation whose members are persons engaged in the sale of live stock upon commission at Chicago, and the object of which is to promote the interests of its members in the sale of such live stock, may under section 18 of the Act to Regulate Commerce maintain a proceeding to correct an unreasonable freight rate upon live stock from various points to Chicago; and this, notwithstanding that certain by-laws and proceedings of the corporation are in violation of that statute of the United States commonly known as the anti-trust law.
2. The defendant, the Union Stock-Yards & Transit Company, having the option under its charter of becoming a common carrier or not, elected to and did become such carrier for dead freight to and from the lines of other carriers in the city of Chicago, but it did not so elect to engage in the carriage of live stock between such lines and its stock-yards in Chicago. It imposes a trackage charge on other defendants for the use of its tracks in the transportation of live stock to and from the stock-yards, and such transportation is conducted wholly by such other defendants. *Held*, That the Stock-Yards Company is not a common carrier engaged in the transportation of live stock within the meaning of section 1 of the Act to Regulate Commerce, and is therefore not subject to regulation in this proceeding.
3. Defendant common carriers undertake to carry live stock through different States to the Union Stock-Yards in Chicago, and until delivery is made at such yards the live stock is interstate commerce and subject to the Act to Regulate Commerce.
4. When carriers forming a through line and dividing the through rate also designate a certain rate for performance of a particular service, and it appears in proof that but one of the carriers is responsible for or interested in the latter charge, it is proper on complaint to deal with that particular carrier and that particular rate, irrespective of the other rates which make up the aggregate charge.
5. Section 2 of the Act prohibits unjust discrimination between individuals through charging different rates for like service under substantially similar circumstances and conditions, and does not prevent a railroad company from absorbing a terminal charge on live stock in one market and exacting such a charge for terminal service in another city which is reached by a different line.

6. The imposing by a carrier of a terminal charge at one live stock market, while it does not impose a similar charge at another competing market, is not necessarily an undue preference under the 3d section of the Act.
7. Nor is the imposition at some locality of a terminal charge upon live stock, while no similar charge is imposed upon dead freight, necessarily a discrimination, under the 3d section, against live stock and in favor of dead freight.
8. While the decision of the United States Circuit Court of Appeals upon the same set of facts, but not between the same parties, has not the technical effect of a previous adjudication, it ought to be and is considered in this case conclusive upon the Commission as to the questions involved and decided.
9. Live stock shipped to Chicago is necessarily delivered for marketing at the yards of the Union Stock-Yards & Transit Company. In reaching its destination, carloads of live stock pass over the tracks of that company, which connect the various lines of the defendants with its yards. For many years the Union Stock-Yards & Transit Company has given the use of its tracks for this purpose, and the defendants have performed the service of moving without charge. Beginning June 1, 1894, the stock-yards imposed a trackage charge upon each car moving in or out. Thereupon the various defendants agreed to and did impose and collect a terminal charge of \$2 per car for the switching of all cars of live stock to the stock yards, in addition to the regular Chicago rate. *Held*, that upon the circumstances of this case the defendants might reimburse themselves for the trackage charge imposed by the Union Stock-Yards & Transit Company, but that they ought not to exact any compensation for their services which they previously rendered gratuitously, and that the imposition of more than \$1 per car as such terminal charge on live stock was in violation of section 1 of the Act to Regulate Commerce.
10. The case is continued upon the question of reparation, for proof of damages by members of the complaining Cattle Raisers' Association, all questions as to such reparation being reserved until such proof is made.

Maclock, Cowen & Burney and *W. V. Newlin*, for complainant.

T. W. Tomlinson for Chicago Live Stock Exchange.

M. A. Spoonts for Ft. Worth & Denver City Ry. Co. and Southern Pacific Company.

Gardiner Lathrop, E. D. Kenna and *Robert Dunlap*, for A., T. & S. F. Ry. Co. and Gulf, Colorado & S. Fé Ry. Co.

James Hagerman for Missouri, Kansas & Texas Ry. Co.

Robert Mather for C. R. I. & P. Ry. Co.

George R. Peck and *C. B. Keeler*, for the C. M. & St. Paul Ry. Co.

Lloyd W. Bowers for Chicago & Northwestern System.

Thomas Wilson for Chicago, St. Paul, Minn. & Omaha Ry. Co.

F. B. Kellogg for Chicago Great Western Ry. Co.

John M. Harlan for Houston, Texas Central Ry. Co. and Southern Pacific Co.

William Brown for Chicago & Alton R. R. Co.

J. W. Blythe, C. M. Dawes and *O. M. Spencer* for Chicago, Burlington & Quincy System.

S. F. Andrews for Illinois Central R. R. Co.

George B. Burnett for Wabash R. R. Co.

F. R. Babcock for Union Stock-Yards & Transit Company.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner:

The complaint in this matter alleges: That the complainant is an association composed of the owners and producers of cattle in the States of Texas, Kansas, Montana, North Dakota, South Dakota and Indian Territory; that its different members are continually engaged in the shipment of cattle and other live stock from various points in the above-mentioned States to Chicago, Ill., over the lines of the defendants, and that this proceeding is brought by the complainant on behalf of its own members and other persons interested in the shipment of live stock from various points in the above-named States to Chicago.

That the defendants, with the exception of the Union Stock-Yards & Transit Company, are common carriers engaged in the interstate transportation of live stock from various points in the above-named States to Chicago under such circumstances as render them subject to the Act to Regulate Commerce.

That the Union Stock-Yards & Transit Company now owns and for many years has owned extensive yards and other facilities for the unloading, storing and marketing of cattle in the city of Chicago, and that these yards have become by the action of the Union Stock-Yards & Transit Company and the various railroad companies centering at Chicago, including the defendants, the general depot for the unloading of live stock at Chicago, and that the defendants hold out to the public the said Union Stock-Yards as their live stock depot in that city; that until about June 1st, 1894, the defendants had always transported cars of live stock to the Union Stock-Yards without any other charge

than the published through rate to Chicago, but that on or about said June 1st, 1894, all the defendants arbitrarily imposed a charge of \$2.00 per car upon all carload shipments to the Union Stock-Yards over and above the regular published Chicago rate, treating the same as a switching or terminal charge; that the defendants were not put to any additional expense which justified the exaction of said \$2.00 per car at that time; that, as the complainant believes, this charge was imposed in pursuance of an agreement entered into between the Union Stock-Yards & Transit Company and the various defendants whose railway lines enter the city of Chicago, that the said railway companies should pay to the Union Stock-Yards & Transit Company a charge of 40 cents each way for the privilege of using the tracks of the Union Stock-Yards & Transit Company, and that the balance of the \$2.00 per car should be retained by the railroad companies although the service rendered by them and the amount expended by them in transporting live stock to the stock-yards was, aside from this 80 cents per car, exactly the same after as it had been for many years before said June 1st.

That the charges from the various points named to Chicago are in the aggregate unreasonable to the extent of this \$2.00 per car.

That at other live stock markets like East St. Louis, Kansas City and Omaha no such terminal charge is made, and that this, therefore, discriminates against Chicago and in favor of those localities.

That upon dead freight consigned to or taken from the Union Stock Yards the switching charge is absorbed by the defendants, wherefore the imposition of this charge is a discrimination against live stock as a species of traffic and in favor of dead freight.

The complainants ask that the defendants be ordered to desist from the further making of this charge and that reparation be awarded to the members of the complaining association.

The Chicago Live Stock Exchange filed an intervening petition. In this petition it is alleged that the Chicago Live Stock Exchange is composed of persons who are interested as commission merchants, owners, and raisers of cattle which are continually being shipped to the Union Stock-Yards for the purpose of

being marketed there. It alleges at greater length, but in substance, the same violations of the Act to Regulate Commerce as those set forth in the complaint, and above stated.

The Union Stock-Yards & Transit Company admits that it is the owner of certain yards, pens, and chutes in the city of Chicago designed and used for the loading, unloading, and storing of cattle, and that very large numbers of cattle are so handled at these yards. It also admits that it is the owner of certain railroad tracks which are connected with the tracks of certain of the defendants and over which communication is had to its yards. It denies, however, that it is a common carrier or that it is in any way subject to the jurisdiction of the Commission in this matter. It says that it imposes a trackage charge for the transportation of cars of live stock over its iron to and from its yards, and affirms that the charge is a just and reasonable one.

The other defendants all admit that they are engaged in the transportation of live stock from different points in the various States named to Chicago, and that they are, in respect of such transportation, subject to the Act to Regulate Commerce.

All the defendants, except those whose lines of railway enter the city of Chicago, deny that they have anything to do with the maintenance of this terminal charge. They assert that they receive no portion of the same in the division of the through rate, that the charge is imposed by the defendants whose lines enter the city of Chicago as a purely local charge, of their own motion and exclusively for their own benefit; and they insist, therefore, that they have no interest in the disposition of this question.

The defendants whose lines of railway enter the city of Chicago are the Atchison, Topeka & Santa Fé; the Chicago Great Western; the Chicago, Rock Island & Pacific; the Chicago & Northwestern; the Chicago, Burlington & Quincy; the Wabash; the Illinois Central; the Chicago, Milwaukee & St. Paul; and the Chicago & Alton. These defendants have all filed separate answers, but these answers come, in the main, to the same propositions.

They all concur in admitting that the Union Stock-Yards have been for a long time and are at the present time the live-stock market of the city of Chicago to which the greater part of the live stock consigned to Chicago goes for disposition; that in one

way and another their lines of railway connect either directly or indirectly with the railway of the Union Stock-Yards & Transit Company, and that they have for a long time been accustomed to and do still transport carloads of live stock over the iron of that company to the stock-yards; that previous to June 1st, 1894, they had been accustomed to render this service without exacting any charge in addition to the regular Chicago rate. They say that previous to this time the Union Stock-Yards & Transit Company, for the purpose of attracting live stock to its yards, had given all the defendants the free use of the tracks of that company for the transportation of live stock and that the various defendants had performed the service of transportation; but that the Union Stock-Yards & Transit Company a short time before June 1st, 1894, notified the defendants that after that date a charge in some instances of 40 cents each way, and, in other instances, of 75 cents each way, would be imposed as a trackage charge upon each carload of live stock which went in and out of the Union Stock-Yards over the iron of the Union Stock-Yards & Transit Company; that the rates for the transportation of live stock from the various points named to Chicago had become and were at that time excessively low; that although they had previously rendered this service for nothing they did not feel that they could continue to do so, and that accordingly they had agreed to impose a uniform switching charge of \$2.00 per car upon all live stock taken to the stock-yards in addition to the regular Chicago rate; that what would remain to the defendants after the payment to the Union Stock-Yards & Transit Company of the trackage charge would be much less than the actual expense of moving the cars from the tracks of the defendants to the stock-yards, and that the charge was a legal and reasonable one. They further averred that, acting upon this determination, the various defendants had properly published and filed with the Interstate Commerce Commission schedules of rates on live stock showing this additional charge, and that the public was thereby fully informed of the fact that it would be made.

The defendants all deny that this charge discriminates against Chicago in favor of other live stock markets and also that it discriminates against live stock in favor of dead freight.

All the defendants except the Chicago & Alton Railroad Com-

pany deny that they have ever held out the stock-yards as their livestock depot in Chicago or that they have ever made the same their live stock depot at that point, or that they would deliver freight billed simply to Chicago at the stock-yards, and they state that they only deliver it at the stock-yards upon the request either of the consignor or the consignee. The Chicago & Alton Railroad Company asserts that the public very well understands that live stock shipped to Chicago must be delivered in the ordinary course of business at the Union Stock-Yards and that it so delivers it unless otherwise directed.

The Atchison, Topeka & Santa Fé Railway Company made answer that from 1893 until 1896 that property was in the hands of receivers; that immediately after this terminal charge was imposed application was made to the Circuit Court for the Northern District of Illinois, that being the court having the receivership in charge, asking that the receivers be instructed not to impose this charge for the reason that the same was an unlawful one, but that it was finally determined by the court of last resort in that proceeding that the charge was lawful and might be properly imposed.

The defendants filed a motion to dismiss the intervening petition of the Chicago Live Stock Exchange, for the reasons, first, that said Chicago Live Stock Exchange was a corporation of limited powers and had no standing to maintain its cross petition; second, that said Chicago Live Stock Exchange was, as to the matters pending in this controversy, engaged in an unlawful combination or conspiracy in restraint of trade and did not come, in respect of those matters, into this controversy with clean hands; third, because the Chicago Live Stock Exchange was not such a person as was contemplated in the 13th section of the Act to Regulate Commerce.

Decision upon this motion to dismiss was reserved until the final disposition of the case, and the intervener was fully heard both upon the proofs and in argument.

The material facts upon which the case is to be disposed of are as follows:

1. The Cattle Raisers' Association of Texas is a voluntary association composed of persons interested in the growing of cattle for market. Its members come from Texas, New Mexico, Indian

Territory and Kansas, and they represent the ownership at the present time of about two and one-half million head of cattle. The association has been in existence for about twenty years, maintains a regular organization, holds regular meetings and issues an annual report. One of its purposes is the obtaining of fair and reasonable freight rates.

2. The Chicago Live Stock Exchange is a corporation organized under the laws of the State of Illinois. Section 2 of the articles of incorporation sets forth the purposes of the organization as follows:

"The object for which it is formed is to establish and maintain a commercial exchange; to promote uniformity in the customs and usages of merchants; to provide for the speedy adjustment of all business disputes between its members; to facilitate the receiving and distributing of live stock as well as to provide for and maintain a rigid inspection thereof, thereby guarding against the sale or use of unsound or unhealthy meats; and generally to secure to its members the benefits of co-operation in the furtherance of their legitimate pursuits."

The affairs of the Exchange are managed by a board of nine directors. Any person having the necessary business qualifications may become a member upon receiving the affirmative vote of seven out of the nine directors, and upon the payment of \$1,500 in money. Upon becoming a member he is entitled to receive a certificate of membership and this certificate may be sold and transferred. Members not complying with the rules of the association may be expelled.

One of the objects in forming the Exchange was to provide uniform rates for the handling of cattle upon commission. Rule 9 refers to this subject and sections 2, 3, 4 and 5 of that rule provide in terms what these rates shall be in all cases. Section 7 provides, among other things, that no solicitor shall be employed who is not a member of the Exchange and that not more than three traveling solicitors for each firm shall be employed in the States of Indiana, Michigan, Wisconsin, Illinois, Missouri, Iowa and Minnesota.

Section 8 provides that if any member of the Exchange, or any firm in which he may be a partner, violates any of the provisions of rule 9 he shall be fined not less than \$250 nor more than \$1,000 for the first offense, not less than \$500 nor more than

\$1,000 for the second offense, and that for the third offense he shall be expelled from the membership of the Exchange.

Section 15 reads as follows :

"No member of this Exchange shall buy, or cause to be bought, any live stock at the Union Stock-Yards of Chicago, Ill., from any agent, individual, firm, incorporated or other stock commission company who are or may be regularly selling live stock for nonresidents on commission, unless all resident members constituting such firms and all resident stockholders constituting such corporations or other stock companies are members in good standing in this Exchange; provided, however, that nothing herein contained shall be construed as in any manner prohibiting any party from selling his own live stock on the market at said stock-yards, or any member of this Exchange from buying said live stock from such owner."

The testimony showed that the Live Stock Exchange was organized in 1884; that previous to that time commission rates at the stock yards had been very irregular but had averaged about the same as those fixed by rule 9; that since the formation of the Exchange and the adoption of this rule those rates had been uniform and stable; that practically all persons selling live stock at the stock yards were members of the Exchange, and that while one not a member might legally engage in such business, he would find it in fact impossible to do so successfully.

3. The Union Stock-Yards & Transit Company is a corporation organized in 1865 under a charter granted by the legislature of the State of Illinois for that year. Under its charter it was given the right to construct pens, chutes, buildings, and in general whatever facilities might be necessary to provide for the unloading, storing and marketing of live stock. It was given the further right to construct tracks connecting these facilities with the different lines of railway entering Chicago, and it was provided that when these tracks were constructed the Stock-Yards Company might either engage in the business of transporting stock and other freight over these tracks on its own account, or might lease that privilege upon such terms as it should deem best.

The original capital stock was \$1,000,000. At first the company constructed a hotel, built yards and chutes and laid from these yards lines of track leading to a connection with each one

of the different railroads which then entered the city of Chicago. The entire business of the company from 1865 to 1878 was the providing of these facilities for unloading, storing and marketing live stock.

In 1878 the packing houses were built, not upon the land of the Union Stock-Yards & Transit Company, but near by; and since then a considerable part of the live stock bought and sold upon the Chicago market has been slaughtered at the stock-yards, and this has led to the springing up of a great number of allied industries. The freight to and from these industries passes over the tracks of the Union Stock-Yards & Transit Company.

The capital stock of that company has been increased from time to time until it is now \$13,000,000. The vice president and manager of the company, who has been identified with it since 1867, testified that both the original capital stock and all this increase had been actually paid in in money, and actually used up in constructing and improving the property of the company. The Union Stock-Yards & Transit Company owns at the present time besides its pens, chutes and various buildings in connection with the stock-yards, about 240 miles of railroad, which is entirely situated in the State of Illinois. It neither makes nor publishes any joint tariff, but confines its operations entirely to the moving of cars to and from the stock-yards and the industries which have sprung up around the stock-yards.

The important fact in connection with this case is that at the present time the stock-yards are the only live stock market in Chicago. Cattle shipped to Chicago for the purpose of being sold upon the Chicago market must go to the stock-yards and can only be got there by passing over the tracks of that company in the same way that the various shipments involved in this suit reach there. This fact was conceded by all parties and is perfectly well understood, both by the defendant carriers and by the public.

4. Before the organization of the Union Stock-Yards & Transit Company there were four different points in the city of Chicago at which live stock was delivered and marketed. The different railroads transporting such freight to Chicago were accustomed to deliver it at any one of these four points as directed, without imposing any charge in addition to the regular Chicago

rate. This was found burdensome and inconvenient by the railroads and the organization of the Stock-Yards Company had its origin in the purpose of consolidating and concentrating these different markets at one point. All the capital stock of the original company with the exception of \$25,000 was owned by the various railroads centering at Chicago and all the railroads which then entered that city and participated in the transportation of live stock were in a greater or less degree subscribers to this capital stock. Of the present defendants, the Chicago, Burlington & Quincy, the Chicago & Northwestern, the Chicago, Rock Island & Pacific, the Chicago & Alton and the Illinois Central were stockholders, having in all \$375,000 of the stock. The other defendants who are now interested in this terminal charge did not at that time enter the city of Chicago. As they have from time to time reached that city they have obtained, either directly or indirectly, a connection with the tracks of the Union Stock-Yards and have used those tracks in the same manner and upon the same conditions as have those companies which were originally stockholders.

As above stated, the original purpose in creating the company was to make a common live stock depot and market and the understanding was that the Stock-Yards Company should connect the yards which it built with the lines of railroad of the several stockholders, that the different railroad companies should have the right to use these tracks without the payment of any trackage charge and should be to the expense of transporting over those tracks live stock to the stock-yards; the profit of the stock-yards was to be found in the charges which they received for the unloading and subsequent storing of the live stock.

Between 1870 and 1878 the various railroad companies disposed of their stock holdings in the Union Stock-Yards & Transit Company. These sales were not made to any particular individual, but were promiscuous sales as opportunity offered at the fair market price. While, however, the railroads had in the main disposed of their stock, they were invited to continue in the board of directors and representatives of the different railroad companies did in fact constitute a majority of that board down to June 1st, 1894, or thereabouts.

It has been said that the Union Stock-Yards & Transit Com-

pany made no charge for the use of its tracks in setting in cars of live stock and in taking out the empty cars, and that this was by virtue of an understanding between that company and the various railroad companies. The building of the packing houses in 1878 furnished large quantities of dead freight both in and out over the tracks of the Stock-Yards Company, and for moving the cars containing this freight that company imposed from the first a wheelage charge of 40 cents per car each way. From 1878 down to June, 1893, the railroads did the work of moving these cars in and out over the tracks of the Stock-Yards Company. At first each carrier moved its own cars, but soon an arrangement was made by which certain engines and a certain gang were employed in this work, the different carriers paying the actual expense in proportion to the number of cars moved. In 1893 it seemed best on all accounts that the Stock-Yards & Transit Company should undertake the entire work of moving these cars in and out over its tracks, and an arrangement was made by which the various railroad companies were to pay the Stock-Yards & Transit Company for this service upon the basis of what it had actually cost the railroads themselves. This was found to be about 80 cents a car each way, which, added to the trackage charge of 40 cents a car each way, makes up \$2.40 per car in all, and at the present time the defendants pay the Union Stock-Yards & Transit Company \$2.40 for every car of dead freight which is handled in and out of the stock-yards. This applies to all the defendants, except the Northwestern and the Chicago, Burlington & Quincy, which pay \$3.10 per car, the distance being greater in the case of those companies.

Previous to June 1, 1894, extensive improvements had been made at the stock-yards and that company professed to think it necessary, in order to obtain some return upon the investment called for by these improvements, to impose a trackage charge in case of live stock. When that determination was announced the representatives of the various railroads upon the Board of Directors of the Union Stock-Yards & Transit Company resigned and have since then had no voice in the management of that company. The trackage charge has been imposed since June 1, 1894. That charge varies in the case of different companies, being in some cases 40 cents per car each way and in other cases 75 cents

per car each way. It does not appear that there was ever any legal obligation upon the part of the Union Stock-Yards & Transit Company to permit the transportation of live stock over its tracks free of charge.

5. Upon receiving notice of the purpose upon the part of the Union Stock-Yards & Transit Company to impose these trackage charges those of the defendants whose lines enter Chicago determined to make a uniform charge of \$2.00 per car for the delivery of all cars at the stock yards. In accordance with this determination that rate was incorporated in the tariff to take effect June 1st, 1894. It is treated as a terminal or switching charge and is imposed in addition to the regular Chicago through rate. It has been collected since June 1st, 1894, with the exception of a short time. Only those defendants whose lines enter Chicago receive any part of this charge, and they alone have to do with imposing and collecting it.

Some of the carriers profess to give the shipper the option of sending his stock to Chicago or to the stock-yards, and claim that they do not deliver at the stock-yards unless so directed. When the stock is billed in Texas the carrier inquires of the shipper whether he desires that delivery be made at Chicago or at the Union Stock-Yards, and he is then informed that in case of delivery at the stock-yards this additional charge will be imposed. Other carriers make no mention of this, relying upon the published tariff, but inasmuch as the shipment is usually consigned to some commission merchant whose place of business is at the stock-yards, delivery is made there without further directions. If the option is nominally given the shipper, it does not leave him any real choice. If his stock is to be marketed at Chicago, it *must* go to the stock-yards, and can only go in this manner, as both he and the carrier perfectly understand.

The defendants justify the imposition of this additional terminal charge after June 1st, 1894, while no similar charge had been made before, upon the ground that then for the first time the Union Stock-Yards & Transit Company exacted compensation for the use of its tracks. The sum exacted, however, was in case of no carrier more than \$1.50 and in case of a majority only 80 cents. The making of a greater charge than was demanded from them by the Stock-Yards Company in any case is sought to be

justified upon the further ground that rates upon live stock had become exceedingly low, so that the carrier could no longer render for nothing this service which it had previously rendered gratuitously. It is true that the rates in June, 1894, were materially lower than they were twenty years before. It is also true that the facilities afforded by the carriers for the reduced rate were much better than they were twenty years before; there having been great improvement in the matter of cars; and the time having been shortened so that stock arrived in market in much better condition. Both the reduction in rate, however, and the improvement in facilities had been gradual, and it does not appear that there had been any very marked reduction or improvement in the few years immediately preceding June 1st, 1894.

Some attempt was made on the hearing to show that the present rate was unreasonably low, and some attempt was made on the other hand to show that it was unreasonably high. Nothing was developed on either side, however, which warrants a finding of fact, nor do we understand that either party seriously makes any claim that the Chicago rate is unreasonable, either as being too high or too low. It should be observed that since the filing of this complaint the rates from points in Texas and Indian Territory have been reduced 5 cents per hundred, which amounts to from \$10 to \$15 per car. This reduction was made about October 1, 1896.

6. It has already been indicated that the different defendants make connection with the tracks of the Union Stock-Yards & Transit Company at various points and in various ways, so that the actual expense to the several defendants of transporting a car-load of live stock from their own iron to the stock-yards varies in different cases.

The intervener conceded upon the trial, and the complainants did not seriously question, that the amount of this charge was reasonable if, under the circumstances, the charge should be imposed. Before the close of the testimony the several defendants were requested by the Commission to furnish statements showing the actual or estimated expense to them in each case of making delivery from their several tracks to the Union Stock-Yards. Such statements have been filed and they make the following showing:

Illinois Central Railroad,	
<i>via</i> 75-cent trackage route.....	\$3.23
<i>via</i> 40-cent trackage route.....	1.65
Average	\$1.94
Chicago, Burlington & Quincy Railroad.....	2.25
Chicago & Alton Railroad.....	2.05
Chicago, Milwaukee & St. Paul Railway,	
<i>via</i> one route.....	\$2.67
<i>via</i> other route.....	2.25
Average	2.46
Atchison, Topeka & Santa Fé Railway	2.28
Chicago Great Western Railway,	
(average of 10 cars to train)	2.20
Chicago & Northwestern Railway	2.34
Wabash Railroad	1.86
Chicago, Rock Island & Pacific Railway	1.65
Total <i>via</i> nine lines.....	20.03
Average.....	2.22

In some instances the foregoing figures are based upon the actual cost of operations for a year or longer, while in other cases they are estimates. There does not seem to be much difference between the actual result and the estimate, having reference to the service performed. Several things should be borne in mind in reference to these figures. In all cases the unloading charge paid by the defendants to the Union Stock-Yards & Transit Company of 25 cents per car is included. All the defendants apparently maintain offices at the Union Stock-Yards, and in most, if not all, cases the expense of these offices or agencies is included. In every case not only is the trackage paid the Union Stock-Yards & Transit Company embraced, but also whatever trackage charge, if any, a particular railroad company is obliged to pay some other company for the purpose of reaching the tracks of the Union Stock-Yards & Transit Company. For instance, the Chicago Great Western Railway Company includes a charge of 75 cents for trackage over the tracks of the Chicago Central; the Chicago, Burlington & Quincy includes a trackage charge of 85 cents over the Pan Handle; the Chicago, Milwaukee & St. Paul includes a trackage charge of 65 cents in one case and 37½ cents in the other case which it pays in reaching the iron of the stock-yards; the Atchison, Topeka & Santa Fé uses the tracks of the Chicago & Grand Trunk, for which it pays about 65 cents per car. These trackage charges paid to other parties than the Union

Stock-Yards & Transit Company are in all cases actually paid and are in all cases necessary to reach the stock-yards. They were, of course, paid and absorbed prior to June, 1894.

The Chicago & Alton Railroad connects with the tracks of the Union Stock-Yards & Transit Company about $\frac{3}{4}$ of a mile from Brighton Park, and the distance from the point of connection to the stock yards is about 3 miles. Brighton Park appears to be the station at which the Chicago & Alton would discharge a carload of live stock billed to Chicago, but not intended for the stock yards. The distance, therefore, from the point at which that company would discharge live stock to the stock-yards is about $3\frac{1}{4}$ miles.

The Atchison, Topeka & Santa Fé Railway Company has limited stock-yards at Corwith, a station in the suburbs of Chicago, and it alleges and the testimony shows that this is the point at which that company would deliver stock billed to Chicago but not intended for the stock-yards. Carloads of stock destined for the Union Stock-Yards leave the main line at Corwith, and the distance from there to the stock-yards appears to be between 6 and 7 miles. It will be seen, therefore, that the distance from the lines of the various defendants to the stock-yards varies from 2 up to 8 or 9 miles. It would also appear that the cost of moving live stock from the main line to the stock yards varied according to the route over which the same was transported as well as in proportion to the distance. Again, it makes a material difference whether this stock is taken in by large or small train loads, the expense of taking in a train of twenty cars being substantially the same as that of taking in one of five cars. It is therefore extremely difficult to estimate the actual cost of movement in addition to the trackage and unloading charges. Taking the estimates and the results of operation together, it seems probable that this varies from about 50 cents a car to 75 cents. In the case of the Chicago & Northwestern Company it appears to be considerably more than this, and the figures given by that company are based upon actual operation.

If the charge for this terminal service is to be regulated by what is ordinarily charged for switching the present charge is a reasonable one. The testimony showed that it seldom happened that a lower switching charge than \$2.00 was made and that this amount was often exceeded.

7. The complainants insisted that the defendants ought to bear this expense for the reason that it was their duty to furnish in the city of Chicago proper terminal facilities for the unloading of live stock, that they had made the stock-yards their depot, that they should, therefore, be to the expense of transporting stock to this depot, and that in point of fact there was no way in which they could provide the necessary facilities for the handling of this stock at Chicago as cheaply as they could bear the burden of this switching service including the trackage charge imposed by the Union Stock-Yards & Transit Company.

None of the defendants seriously claim that they now have facilities for unloading and delivering at points upon their own lines live stock transported by them to the city of Chicago. Whether they could do so, and, if so, at what cost, was somewhat gone into in the testimony. Some of the defendants appear to have land upon which yards might be erected. Some of them have taken steps looking to the providing of other facilities. Such facilities could be provided by some much more cheaply than by others. The vice president and manager of the Union Stock-Yards & Transit Company testified that in his judgment the railroads made delivery of live stock in the present manner as cheaply as they could provide terminals at which to handle it.

It would certainly cost the defendants a very material amount to make delivery at their own depots, but how much cannot be definitely found from the testimony in this case, nor do we think that question could be satisfactorily answered by any testimony. It has already appeared that if such facilities were provided there would be no use for them, since delivery must be made at the stock yards.

8. The complainants allege that no such charge is made at other stock markets in the west, and that this is an unlawful discrimination against Chicago as such a market.

The principal stock markets west of Chicago are at East St. Louis, Kansas City, Omaha, and perhaps Sioux City. At all these points the business of marketing and slaughtering stock seems to go on in much the same way as at Chicago. In each case there is a stock-yards company which owns the necessary facilities for unloading and storing stock preparatory to marketing the same. In every case these stock-yards companies own the

tracks connecting their yards with the various railroads. The matter of charges varies with each place. The stock-yards company at Omaha apparently imposes a terminal charge of \$1.00 upon live stock and \$2.00 upon dead freight. At Sioux City a terminal of \$1.00 is imposed upon live stock. These charges cover the movement of the car over the tracks of the stock-yards and the unloading. At East St. Louis and Kansas City there seems to be a charge of 50 cents per car for unloading the stock, but it would appear that no trackage charge is made by the stock-yards at these points, and that the carriers move their own cars.

Whatever charge is made is in all cases absorbed by the carrier, for in no instance except at Chicago is a terminal of this sort imposed upon live stock. The reasons for this do not very clearly appear. The testimony showed that some time ago an attempt was made to impose a uniform terminal charge of \$2.00 per car upon live stock going to the stock-yards at Omaha, and that such a terminal was collected for a short time, but that the Missouri Pacific, and perhaps some other roads entering Omaha, declined for business reasons to maintain this charge, and that the other carriers were thereby forced to discontinue it.

It did not appear that any attempt had ever been made to impose a terminal charge upon live stock at either of the other points named, the general reason assigned being that competition rendered it impossible.

It is manifest that all lines operating from the same territory must impose the same charge, if any, at a given point, since if one line did impose the charge and a rival road did not, the latter line would obtain the business to the exclusion of the former.

Of course, the imposition of this charge must be, to that extent, prejudicial to Chicago. For many years the relative rates from points in Texas and other territory covered by this complaint to Omaha, Kansas City, East St. Louis and Chicago have differed by the same differential. The exaction of this terminal makes the rate to Chicago, of necessity, just \$2.00 per car higher, and to just that extent it disturbs the previous relation in rates to the disadvantage of Chicago. The complainants, especially the interveners, insist that this discrimination has produced actual results in the falling off of receipts of live stock at Chicago.

The receipts of Texas cattle at Chicago beginning in 1890 have been as follows:

1890.....	657,053
1891.....	689,187
1892.....	717,153
1893.....	607,099
1894.....	384,469
1895.....	359,643
1896.....	333,423

One witness for the Chicago Live Stock Exchange, who was a member of that Exchange, was of the opinion that this falling off had been due, not to a large, but to an appreciable extent, to the imposition of this terminal charge, which had not only actually increased the expense of shipping live stock to Chicago as against other markets, but had created an unfavorable prejudice against that market in the minds of shippers. Upon the other hand, one of the complainants, himself a large shipper from Texas, testified that Chicago had been about as good a market since the switching charge was imposed as before. Certainly the imposition of this charge must work against Chicago by just the amount of the charge. It is quite probable that the imposition of this charge at Chicago and nowhere else might injure that market over and above the actual increase in the rate thereby occasioned, but we can hardly find from the testimony that any appreciable result of this kind can be traced directly to this cause.

The defendants introduced the following statement, showing the receipts of carloads of live stock at Chicago, Omaha, Kansas City, St. Louis and Sioux City for the years 1887 to 1896 inclusive:

Year.	Chicago W. S. Yards.	So. Omaha U. S. Yards.	Kansas City Stock-Yards.	St. Louis Nat'l Stock-Yards.	Sioux City Stock-Yds.
1887	212,286	27,423	67,752	9,838	1,223
1888	210,807	30,492	74,666	30,150	8,530
1889	265,136	42,721	83,972	29,226	13,514
1890	311,557	54,283	108,160	35,325	16,658
1891	304,706	47,754	91,456	36,613	11,312
1892	309,901	58,644	97,462	36,227	11,290
1893	275,933	59,129	99,755	37,272	10,108
1894	287,052	61,784	107,494	40,057	11,237
1895	270,816	40,147	103,368	44,260	8,207
1896	277,437	44,758	113,594	55,695	8,275

The correctness of these figures was not denied, and from them

the defendants argued that there had been no undue falling off of receipts at Chicago as compared with other markets since the making of this terminal charge. They insisted moreover, that if Chicago was unfavorably regarded as a stock market and was losing its prestige and patronage in that respect, this was due, not to the imposition of this switching charge nor to the attitude of the railroads, but rather to the practices and extortions of the Chicago Live Stock Exchange, being the intervener in this suit, and the Union Stock-Yards & Transit Company.

While the freight rates had materially declined, the commissions established and exacted under the rules of the Chicago Live Stock Exchange for the selling of live stock were the same at the date of the hearing that they had been for many years before. The stock-yards charged for the fodder upon which stock was fed at the rate of \$30 per ton for tame hay, \$20 per ton for prairie hay, and \$1 per bushel for corn, prices which were in each case several times the actual value of these commodities and the same as had been originally charged in 1865.

It did not clearly appear how these charges, either of the commission men or of the stock-yards, compared with similar charges at other points, although there was some general testimony to the effect that they were about the same.

9. The complainants, especially the interveners, strenuously insisted that the imposition of this terminal charge upon live stock while no similar terminal was imposed upon dead freight was a discrimination against live stock in favor of dead freight.

It has already been stated that the various defendants pay the Union Stock-Yards & Transit Company \$2.40 per car for handling cars of dead freight from a connection with their tracks. In case of two of the defendants this charge is \$3.10 per car. The testimony did not very clearly show to what extent this charge was absorbed. The General Manager of the Chicago & Alton testified that in the case of his company a terminal charge of \$2.00 per car was imposed and collected upon dead freight as well as upon live stock. The Traffic Manager of the Illinois Central testified that his company imposed and collected this charge except upon freight from and to certain sections, that the rule was to impose and collect it, but that competition sometimes compelled them to absorb it. This seems to be the actual

state of the matter. The various roads professedly impose a terminal of \$2.00 upon dead freight, but there are many instances when that terminal, owing to competitive conditions, is not, in point of fact, imposed and collected.

It also appeared that in the case of live stock the terminal charge was only \$1.00 when it came from certain sections. The Wabash Road, for instance, imposes a terminal charge of \$2.00 upon live stock coming from points involved in this case, but only \$1.00 upon live stock coming from the east. The testimony in behalf of that defendant showed that this was due to the action of eastern lines in refusing to impose the greater charge.

10. Some of the defendants set up the fact by way of answer, and showed upon the trial in proof that the question of the legality of this terminal charge had already been passed upon by the Federal court of last resort, and claimed that it was, therefore, *res judicata*.

In 1894, when the charge was first put in effect, the Atchison, Topeka & Santa Fé Railway was being operated by receivers under the direction of the Circuit Court for the Northern District of Illinois. One Keenan made shipment of several carloads of cattle from Kansas City to Chicago. These cars were simply billed to Chicago and the freight was prepaid upon them at the tariff rate. The railway company transported the cars to the stock-yards, that being Keenan's place of business, demanded this charge of \$2.00 per car and refused to make delivery until the same was paid. Thereupon Keenan filed a petition in the receivership suit, asking the court to order the receivers to deliver up this stock without the payment of this terminal charge. In that suit certain other parties, members of the Chicago Live Stock Exchange, who were continually receiving shipments of this kind, and being compelled to pay this terminal charge, intervened and asked the court to declare the charge illegal and direct the receivers to desist from imposing the same. The circuit court held that the charge was illegal, but upon an appeal by the receivers the circuit court of appeals reversed that decision and held that the charge was a legal one. A writ of certiorari was asked from the Supreme Court of the United States to correct this judgment of the circuit court of appeals, and was refused.

This case in the circuit court was entitled *Union Trust Co. of*

New York v. Atchison, T. & S. F. R. Co.; *Keenan v. Atchison, T. & S. F. R. Co.*, 64 Fed. Rep. 992. In the circuit court of appeals the case was entitled *Walker v. Keenan*, 73 Fed. Rep. 755. These two reports of the case are referred to as showing the precise questions raised and decided.

Before discussing the main issues presented by these facts, two preliminary motions are to be disposed of.

The defendants move to dismiss the petition of the Chicago Live Stock Exchange and they apparently base this motion upon two grounds: First, that the prosecution of a suit of this kind is not contemplated by the articles of incorporation and therefore not within the capacity of the corporation, and, second, that the complainant itself is engaged in illegal practices in connection with the handling of this live stock at Chicago, and does not, therefore, come into court with clean hands.

Looking to the purposes of the corporation, as set forth in the act of incorporation, it can be fairly said that the scope of it all is to promote the marketing of live stock at Chicago in the interest of the members of that corporation. One of the vital essentials to providing a proper market for such live stock, and to fostering the business interests of the incorporators as commission merchants engaged in the sale of live stock, must be the securing of reasonable freight rates upon that kind of merchandise to Chicago; indeed, without this there could be no market at Chicago. We think, therefore, that this corporation is the kind of body which is contemplated in the 13th section of the Act. As a corporation it has no direct pecuniary interest in the freight rate or in the imposition of this particular charge, but its members, for whose general benefit and protection it was formed, have a vital interest in this respect. The first ground of objection taken by the defendants is not, therefore, sustained.

The second ground of objection is that the Live Stock Exchange, being itself in violation of law, does not come into court with clean hands, and cannot, therefore, be heard.

The evidence seems to show that one of the objects of this organization was to promote uniformity in commission rates and to confine the commission business at the Chicago stock-yards exclusively to members of the Exchange. For this purpose one of the by-laws fixes the rate of commission upon the sale of different

kinds of live stock. The by-laws further provide that if these rates are not adhered to various penalties shall be imposed, and that for continued violations, a member shall be expelled. They further provide that members shall have no business dealings with those who are not members of the Exchange. The practical effect of all this is that, whereas, before the organization of the association, commission rates varied at the stock-yards, since that time they have been uniformly maintained at those fixed by the by-laws, and the further result is that only members of the Exchange do, or, as a matter of fact, can, engage in the live-stock commission business at the stock-yards. The defendants say that this is a palpable violation of the anti-trust law, and insist that this Exchange shall not be permitted to invoke the law for the purpose of getting this live stock to Chicago in order that the members may work their unlawful practices upon it when there.

There is much force in this contention, but we are unable to assent to it, in view especially of the great latitude allowed in the matter of parties to proceedings of this kind by the terms of the Act. Assuming that the members of the Live Stock Exchange are individually subject to a penalty, and that they might be enjoined from continuing their organization in this respect, does it follow that the corporation may not maintain this intervening petition? Some of the objects of the organization are certainly lawful and commendable. Indeed, it may be questioned whether anything contained in the act of incorporation indicates an unlawful purpose. Whatever illegality may be connected with the institution is in the working out of those purposes. Now, the fact that a corporation or an individual may be engaged in an unlawful thing is no reason why that corporation or individual may not maintain a suit for the purpose of enforcing or securing a lawful right. These defendants, for instance, have apparently agreed to impose and maintain this terminal charge, and that agreement, if in fact made, is perhaps in violation of the same anti-trust law which they here invoke against the Chicago Live Stock Exchange. But is the fact that the defendants are in violation of some other statute of the United States in the maintaining of a particular rate a reason for holding that they may not set up in this proceeding that the same rate is not in violation of the Act to Regulate Commerce?

This motion to dismiss is overruled.

The Union Stock-Yards & Transit Company alleges that, in respect of the matters involved in this proceeding, it is not a common carrier subject to the jurisdiction of the Act to Regulate Commerce, and moves to be dismissed.

That company is a corporation under the laws of the State of Illinois. By the act of incorporation it is authorized to construct stock-yards, connect those yards with the various lines of railway entering the city of Chicago, and to either lease such connecting tracks for the purpose of the transportation of live stock and other freight between the various lines of railway and the stock-yards, or to so transport live stock and other freight over such connecting lines itself. In accordance with this act of incorporation the company has constructed its stock-yards and its lines of railway connecting the tracks of the various defendants with those of the stock-yards. It may by virtue of its corporate power either lease these connecting tracks or furnish the motive power and conduct the transportation of various kinds of freight over these tracks to and from the stock-yards. Originally it leased the right in all cases, receiving in the case of dead freight a trackage charge and imposing in the case of live stock no charge whatever. Subsequently it elected to transport the dead freight itself, and at the present time it does furnish its own motive power and its own crews and haul dead freight from the various lines of the defendants to the stock-yards and back. With reference to this freight, it is undoubtedly a common carrier. In respect to live stock, however, it imposes a trackage charge, and the defendants in all cases by their own motive power and with their own crews transport the cars to and from the stock-yards. Apparently at the stock-yards the work of unloading is done by the Stock-Yards & Transit Company.

Upon this state of facts it is difficult to see how the Union Stock-Yards & Transit Company can be held subject to the Act in this proceeding. The Act provides that it shall apply "to any common carrier or carriers engaged in the transportation of passengers or property." The Union Stock-Yards & Transit Company is not in any sense of that word a carrier as to this freight. It publishes no tariff; it issues no way bill; it has nothing to do with the transportation of this property. It possesses no incident

and discharges no function of a common carrier in respect to this traffic.

In so holding we have in mind the cases *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.* 2 I. C. C. Rep. 162, 2 Inters. Com. Rep. 102, and *Independent Refiners' Asso. v. Western New York & P. R. Co.* 6 I. C. C. Rep. 378. In the first of those cases it was held that a bridge company owning a bridge crossing the Ohio River and engaged in transporting carloads of interstate freight across that bridge for a switching charge was a common carrier *de facto* which might maintain a petition under the Act to Regulate Commerce for the purpose of compelling another carrier subject to the Act to afford it equal facilities for the forwarding of such freight. It may be noted that the circuit court took a different view of that question even, holding that the bridge company under its act of incorporation was not a common carrier. *Kentucky & I. Bridge Co. v. Louisville & N. R. Co.* 37 Fed. Rep. 567, 2 Inters. Com. Rep. 351. In the matter of the Independent Refiners' Association, the Lehigh Valley Railroad was engaged in the discriminating practices complained of, and leased its road for a short time to the Philadelphia & Reading Railroad Company, by whom the practices were continued. Upon the termination of the lease the Lehigh Valley resumed possession of its property and still continued the same discriminations. The Commission held that the Lehigh Valley Company was liable for damages accruing to shippers by these unlawful practices during the period of the lease.

In the case before us the Union Stock-Yards & Transit Company was given by its charter the option of becoming a common carrier over its tracks or not. With respect to this traffic it elected not to become and has never been a common carrier. We decide merely that in this matter we have no power to reduce this trackage charge nor to make any order which shall affect the Union Stock-Yards & Transit Company. The railway companies who impose and collect the charge are the only parties who can be reached. Whether in respect to dead freight which the Union Stock-Yards & Transit Company transfers to or from its yards for a definite switching charge, when such transfer is part of interstate transportation, that company is a common carrier subject to the Act to Regulate Commerce, or whether that company,

having elected to become a common carrier with respect to this dead freight, could refuse to be a common carrier subject to the Act in respect to carloads of live stock duly tendered it for transportation, are questions which we do not consider.

The motion of the Union Stock-Yards & Transit Company to be dismissed should be sustained.

This brings us to the real question, and it is important to observe exactly what that question is. It is not as to the reasonableness of the through rate as a whole, including this terminal charge, but merely as to the lawfulness of the terminal charge itself.

Ordinarily the whole rate is the only thing which is or can be considered and passed upon. The Commission has nothing to do with the division of that rate, that being a matter which is left entirely to the agreement of the carriers themselves. Here, however, the rate as a whole is not called in question, and there is no evidence in the case from which it can be found that the through rate from the points in question to Chicago is or is not a reasonable rate. It must be assumed that the rate, excluding this terminal charge, is a fair one to both parties.

If the through rate were what was really aimed at by the complaint, then all ground of complaint has been removed since the complaint itself was filed. About October 1, 1896, rates on live stock from points embraced in the territory covered by this complaint to all western markets, including Chicago, were reduced 5 cents per 100 pounds. This would amount to from \$10 to \$15 per car. Therefore, the Texas shipper could actually deliver his stock in Chicago for from \$8 to \$13 per carload cheaper than he could before the \$2 rate was imposed, and all the complaint asks for is the abolishment of that terminal charge.

This charge is imposed by the terminal carriers at Chicago and those carriers receive and retain the entire amount of that charge. The complaint is that this charge is an unlawful one, that no matter what the Chicago rate may be, the addition of this particular sum to that rate is in violation of the Act to Regulate Commerce.

It is suggested by at least one of the defendants that if not the through rate, but the terminal charge, is the matter in controversy, then the Commission has no jurisdiction over that subject,

since the service performed is a purely local one. This, however, is not so. Some of these defendants show by their testimony that they insist that it shall be stated in the bill of lading itself that delivery is to be made at the Union Stock-Yards, and they all agree that the understanding of the parties, when the shipment leaves its initial point, is that the stock must be and is to be delivered at the Union Stock-Yards in Chicago. The undertaking, therefore, is to transport this stock from the point of shipment to the Union Stock-Yards. The freight has not reached its destination until it reaches the Union Stock-Yards. Until so delivered it is interstate commerce, and subject to the Act to Regulate Commerce. If the carriers forming the through line elect to divide the entire rate and to designate a certain rate for the performance of a certain service, if they show in proof that a particular carrier is alone responsible for, and alone interested in that charge, then we may deal with that particular carrier and that particular charge irrespective of the other charges which make up the entire rate.

The single question is, therefore, Is this terminal charge of \$2.00 imposed by the carriers whose lines enter the city of Chicago in violation of the Act to Regulate Commerce?

The complainants insist that it does violate the second section of that Act in that similar charges are not imposed at other livestock markets where the conditions are substantially the same. This claim involves a misconception of the second section. That section of our Act corresponds to what is known as "The Equality Clause" in the English Act. That clause which was enacted before the "Undue Preference Clause," corresponding to our third section, provided, in substance, that railways should exact the same compensation for the same service from all persons. The intent of our second section is to prevent discrimination between individuals. It prohibits the rendering of a given service to one person for a less compensation than is exacted from some other person for the same service under substantially similar circumstances and conditions. There can be no violation of that section unless the services are "like." And in order to be "like" within the meaning of that section they must be rendered at least over the same line. Assume, for instance, that some one of these defendants reaches both the city of Chicago and the city of

Omaha. Now, if that line should absorb this terminal charge in Chicago in the case of one shipper and should decline to absorb it in the case of another shipper from the same point, that would be a discrimination under the second section, but if this line absorbed the terminal at Omaha and did not absorb it at Chicago, that could not work a violation of the second section, for the service of transporting to Chicago and the service of transporting to Omaha is not a like service within the meaning of that section. The second section can, therefore, have no application to the facts in this case.

It is urged that this charge is a violation of the third section, for the reason that it unduly prefers other stock markets of the west as against Chicago, in that similar charges are not imposed at those markets. The different places referred to in the testimony are East St. Louis, Kansas City, Sioux City and Omaha, and it appears that at none of these places is such a charge made. The claim of the complainant seems to be two-fold. First: The rates from Texas points to these different markets have for many years differed from each other by certain differentials. It has during all that time cost the shipper a certain price to send a given carload to East St. Louis, and a certain amount more to send that same carload to Omaha or Chicago, respectively. Now, when this switching charge was imposed on the 1st day of June, 1894, it increased by exactly that much the cost of sending a carload of live stock from any particular point to Chicago without a corresponding increase to the other markets named. If the relation was right before, it became wrong by the imposition of this charge.

Second: Chicago is one of several western stock markets. At all these markets live stock is delivered and marketed in substantially the same way. It is the duty of the defendants in serving these different markets to treat all alike, and if they absorb a particular charge in one case, they must absorb that charge in every case. To impose a terminal charge at Chicago and no similar charge at these other markets is a preference in favor of the other markets to the disadvantage of Chicago.

It is certainly true that the addition of this terminal makes it so much more expensive for the shipper to deliver his live stock at the stock-yards in Chicago and that this additional expense

must to that extent work against Chicago as a cattle market. If a terminal charge is imposed at Chicago and not at these other markets that certainly is to the disadvantage of Chicago. If, therefore, the Interstate Commerce Act requires that any absolute differential shall be maintained between these different markets or that they shall be treated with absolute equality in the matter of terminal charges, and invests the Interstate Commerce Commission in the first instance, and the courts finally upon proceedings to enforce its order with authority to determine just what this differential shall be, and to enforce this equality of treatment, then the complainants are right in their proposition. If the defendants are under obligation to absorb terminal charges in every case if they do in any, their conduct in this instance is in violation of law. If they are under obligation to maintain an absolute differential between these different markets it is fair to assume, in the absence of evidence to the contrary, that the one which has for years been in existence is the proper one.

Such cannot, however, now be considered the law. The Interstate Commerce Act, as interpreted by the Supreme Court of the United States, imposes no such rule. That Act does not attempt to fix the rates which railway companies shall charge, nor does it in any way provide a tribunal which can establish those rates. The carriers are left entirely to their own discretion in the making of their rates, subject only to certain prohibitions contained in the law. So long as those prohibitions are not infringed every carrier is free to determine for itself what traffic it will engage in and foster, and at what points and in what manner, and to adjust its tariffs and connections accordingly. It cannot, in theory at least, impose an unreasonable rate, nor can it discriminate between different shippers in the amount of compensation which it exacts for a like service. It may give to one locality or one commodity a preference over some other locality or some other commodity, provided that preference be not undue or unreasonable. This is the import of the recent cases.

Interstate Commerce Commission v. Baltimore & O. R. Co. 43 Fed. Rep. 37, 3 Inters. Com. Rep. 192, 145 U. S. 263, 36 L. ed. 699, 4 Inters. Com. Rep. 92; *Cincinnati, N. O. & T. P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 184, 40 L. ed. 935, 5 Inters. Com. Rep. 391; *Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inters.

Com. Rep. 405; *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co* 167 U. S. 479, 42 L. ed. 243; *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144.

What constitutes an undue preference has not yet been defined by the courts. That seems to be a question of fact resting in the judgment of the trier. The preference must not be unnecessary. It must not bear too severely. It must not be unreasonable. Considering all the surroundings, and giving to the carrier that latitude which the court concedes it, does the adjustment of its tariffs work an undue and unreasonable preference and advantage?

Regarding this question as one of fact, there are several elements to be taken into account.

1. The charge is a small one. As compared with the entire freight upon a carload of live stock from Texas to Chicago it is almost insignificant, being only a fraction of a cent per 100 pounds. It is not meant that a discrimination may not amount to an undue preference simply because it is small. Any preference, no matter how slight, may be undue if circumstances do not excuse it. Moreover, the unreasonable exaction complained of in cases of this kind is almost always slight in case of a single shipment. This charge, while but trifling as applied to a single carload, amounts in the aggregate to a very large sum annually. What we have in mind is, that the very enormity of the preference might in some cases render it an unreasonable one, although justifiable to some extent; and this is not that case.

2. This discrimination has not worked any appreciable disadvantage to Chicago as a market. An examination of the receipts of live stock in comparison with those of the other markets in question show in some instances since 1893 a relative gain and in some a relative loss. As is said in the findings of fact, this charge must of necessity be to the disadvantage of Chicago, but that disadvantage is not so serious that its effect can be observed. Now, a discrimination may undoubtedly be an undue one although its results cannot be directly traced; but it might easily happen that the very hardship actually resulting in a particular case would make it undue, and that can hardly be said here.

3. The conditions at the different markets are not the same, and an examination of those conditions, as far as they are revealed by this case, leaves it somewhat doubtful just how far there is any preference, due or undue, against Chicago.

It appears that there are certain terminal charges which the carriers are compelled to bear in connection with the delivery of live stock at the stock-yards in all these markets. Apparently the only charge which is made by the stock-yards at Kansas City and East St. Louis is an unloading charge of 50 cents per car. The different carriers use their own motive power in setting in and taking out the cars, and this in the case of the most favored companies is almost nothing at each of those points, since the distance that the cars must be moved over the tracks of the stock-yards is insignificant. At Sioux City and Omaha the stock-yards perform the switching service and make a gross charge of \$1.00 per car for this and the unloading. At Chicago the cost to those carriers which are the most favorably situated seems to be about \$1.65 per car, including the trackage and unloading charges. The carriers therefore absorb 50 cents at Kansas City and East St. Louis, \$1.00 at Sioux City and Omaha and \$1.65 at Chicago.

If the theory of the complainants is correct, and every stock market must be treated exactly alike in this particular, then Kansas City might well say that the railroad companies should absorb no more at Chicago than at Kansas City, and it would follow that they ought to absorb of the terminal charges at each point 50 cents; that is to say, they should impose a charge of 50 cents at Sioux City and Omaha and \$1.15 at Chicago. As already intimated, however, no such rule as this is either contemplated or possible of application in the absence of some body which absolutely fixes the rates for all carriers to all these points.

Of course, in the above statement only the charges of those carriers which are most favorably located are referred to. Other carriers incur and absorb much greater amounts in the way of making deliveries of live stock than these. The Chicago & Alton, for instance, pays a switching charge of \$2.00 at Kansas City in addition to the unloading charge. Both the Chicago, Milwaukee & St. Paul and the Chicago & Northwestern pay the Union Pacific a considerable sum for making delivery at the stock-yards at South Omaha. It will be remembered that at Chicago the actual expense of making delivery varies from \$1.65 to \$3.34.

These increased expenses are due, however, to the unfavorable

location of some carriers and are necessary to put those carriers upon an equality with the most favored ones. The charge made by all carriers from the same section must be the same, and the least expensive line, or what is equivalent to the shortest line, fixes the rate for the others.

4. It appears that these terminal charges are absorbed at other points than Chicago by reason of competition.

The cases from the United States Supreme Court above referred to all hold that competition may afford a legitimate reason for preferring one community to another. Indeed, competition in its various forms is about the only reason which can ever justify such preference. We can hardly see why, if it justifies a discrimination in any case, it may not in this. The Chicago & Northwestern Railroad Company makes delivery of live stock at both Omaha and Chicago. Let it be assumed that a terminal charge of \$2.00 would be a just and reasonable charge at both those points. Owing to the competition of an independent line which does not reach Chicago, like the Missouri Pacific, the Chicago & Northwestern is unable to impose that charge at Omaha. Is this a reason why it should be compelled to absorb the Chicago terminal which is in every respect a proper and reasonable one? The same reasoning which would hold that it must would put it into the power of a single road to abolish terminal charges at every considerable railway center in the United States.

There undoubtedly may be instances in which the adjustment of rates, each of which is entirely reasonable and proper in itself, works a violation of the third section, but the present case is not one. We hold that, if the imposition of this terminal charge at Chicago is just and reasonable, the fact that similar charges are not imposed by the defendants at the other competing stock markets referred to does not make this an undue preference under the third section.

The complainants insist that this charge is unlawful because it discriminates against live stock and in favor of dead freight in that no similar terminal is imposed upon dead freight.

The testimony upon this point is not very satisfactory. It appears, however, that the rule is to impose the same terminal upon both live stock and dead freight at Chicago, but that in some cases competitive conditions require its absorption in the case of

dead freight. The Illinois Central, for instance, charges the terminal, except on merchandise intended for Texas points and some other points in the southwest. It also appears that the terminal charge upon live stock received from the East is \$1.00, as against \$2.00 upon live stock received from the West. The Wabash Railway charges \$2.00 upon cars coming from one section and \$1.00 upon cars coming from another section, although the expense to it is in each case identical. This results from competition with eastern lines.

What has been said in reference to undue preference between different markets applies with equal force to this contention of the complainants. A carrier may, under stress of competition, absorb a terminal charge upon one kind of merchandise or in favor of one locality and not in favor of another, unless in so doing he is guilty of an undue preference, and there is nothing in this case to show any such unlawful conduct on the part of any of these defendants. What seems to be the position of the complainants, that the defendants, as a matter of law, are compelled to charge the same terminal upon all classes of freight and upon cars received from all directions, cannot for the reasons already stated be sustained.

This brings us to consider whether this charge is in violation of the first section, as being an unjust and unreasonable charge. The complainants contend that it is. Their position is that the rate to Chicago includes, of necessity, a delivery of the stock; that a proper delivery cannot be made without providing certain facilities therefor; that the different carriers have not provided such facilities elsewhere, but have made and constituted the stock-yards their common depot for this purpose; that this being so they must be to the expense of making delivery at that point, and if some instrumentality which they have hitherto used without charge has become a matter of expense to them, they must bear that expense as an incident to the service. The defendants say that this claim of the complainants has already been passed upon by the court and is *res judicata*. Manifestly the first matter for determination is how far this question is already concluded by judicial action.

At the time this terminal charge was first imposed, the Atchison, Topeka & Santa Fé Railway was in the hands of receivers,
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who were acting, as to that portion of it entering the city of Chicago, under the direction of the Circuit Court for the Northern District of Illinois. One Keenan, soon after the charge was imposed, and apparently for the purpose of testing its legality, made a shipment of live stock from Kansas City to Chicago, upon which he prepaid the published rate to Chicago, but did not prepay the terminal charge. Keenan's place of business was at the Union Stock-Yards, and the receivers made delivery, without further instructions, to him at that point, requiring the payment of this additional \$2.00 per car. Keenan declined to pay it and the receivers declined to deliver until such payment was made. Thereupon Keenan filed a petition in the Circuit Court for the Northern District of Illinois, alleging that the charge was illegal and asking that the receivers be directed by the court to make delivery without the payment of such charge. Immediately after the filing of this petition several other persons, who were members of the Chicago Live Stock Exchange and interested in the shipment of cattle to the stock-yards at Chicago, filed intervening petitions in which they asked the court to direct the receivers not to impose this terminal charge upon any shipments of live stock to the stock-yards. The contention of the petitioners was identical with that of the complainants upon this branch of the case, and that contention the circuit court apparently sustained.

That court held upon the strength of *Covington Stock-Yards v. Keith*, 139 U. S. 128, 35 L. ed. 73, that the rate from Kansas City to Chicago included a delivery of the cattle at Chicago, and that the receivers must make such delivery without further compensation; that the stock-yards had become the depot of the Atchison, Topeka & Santa Fé Railway, and was the place at which delivery of livestock in Chicago must be made; that therefore it was incumbent on the receivers to make delivery at that place without the exaction of the terminal charge of \$2.00. The court accordingly directed the receivers to deliver Keenan his stock, and not to impose the terminal charge for the future.

From this decision the receivers appealed to the United States Circuit Court of Appeals for the Seventh Circuit. That court reversed the judgment of the circuit court and held that the charge, upon the facts as presented in that case, was a legal one. As we understand the reasoning of that court, it is that while a

freight rate ordinarily includes the cost of delivery, that is not necessarily true. A carrier may, if it sees fit, divide the total rate, making the cost of delivery a separate charge by itself. At all events it held that, under the circumstances of this particular case, the carrier might lawfully impose a charge for making delivery at the Union Stock-Yards, and the Supreme Court of the United States refused an application for a writ of certiorari to review this judgment.

It can hardly be said that this decision of the circuit court of appeals is to be regarded as in the nature of an estoppel. Certain members of the Live Stock Exchange were parties to that suit, but the corporation itself was in no sense a party. The Cattle Raisers' Association of Texas, the original complainant in this suit, does not appear upon the record either as an association or by any of its members. While, however, it cannot be treated as having the technical effect of a previous adjudication of this same question, it is a judicial decision which should be of controlling force with us. Whatever order we might make in this case can only be enforced by an application to some circuit court. Any circuit court, even though it were not within the Seventh Circuit, would feel bound to follow in this case the judgment of the circuit court of appeals. We ought, therefore, to be controlled in the same manner and to the same extent by the judgment of that court. Whatever the views of the Commission might have been as to the questions involved, that judgment is, in effect, conclusive upon us so far as the matters embraced in it were identical with the questions presented here.

An examination of the record in that case apparently shows that every essential fact which could bear upon the determination of this question was presented there, with the single exception of the fact that the Union Stock-Yards & Transit Company was originally organized by the various railroad companies centering at Chicago for the purpose of creating a common live stock market where delivery of live stock destined for Chicago could be made by all the carriers. While this fact would have perhaps an important bearing upon the question as to whether these companies ought in good conscience to impose this charge, we hardly think it could have produced a different result in the determination of the legal question submitted to the court. The de-

defendants in this case never owned a majority of the stock of the Union Stock-Yards & Transit Company. They have for many years owned none of that stock. Some of the defendants never owned any of it. It does not appear that the various railroads ever had any legal right to insist upon the use of the tracks of the stock-yards free of charge nor that they could on the 1st of June, 1894, have successfully resisted the payment of the charge exacted by the Stock-Yards Company.

It must be accepted as the law of this case that there is no legal obligation, under the circumstances presented, upon the part of the various carriers to make delivery at the Union Stock-Yards. They have a legal right to impose a charge of the nature which they do impose.

We do not think, however, that this is the question presented to us for determination. Most questions coming before this Commission are questions of fact, not questions of law. Whether a particular thing should be considered is a legal question, but when it has once been determined what elements, as a matter of law, are to be taken into account almost every case resolves itself into a question of judgment. Upon a survey of the whole situation, looking at these matters from the standpoint of both parties, what, in fairness to the public and the railroads alike, ought to be done! This is the thing for determination here. That the defendants may charge one sum to Chicago and an additional sum for delivery at the Union Stock-Yards, as a legal proposition, has been settled. Whether they ought to make the charge they do, or any charge, or whether the charge for delivery is already fairly included in the rate, is a proposition of fact for consideration. Under all the circumstances, is this terminal charge a "just and reasonable" one under the first section?

The defendants say that the complainants have admitted that if the imposition of any charge is lawful, then this charge is a reasonable one. The intervenor did concede upon the trial that \$2.00 was a reasonable switching charge, if any such charge should be imposed. The complainant did not go quite that length. It cannot be said that either of them conceded that the imposition of the charge was just and reasonable under the first section. The defendants have all shown what the cost of this service to them is.

It appears from the findings of fact that in some instances the actual cost to the carrier, including the trackage charge paid to the Union Stock-Yards & Transit Company and the unloading charge also paid to that company, is less than \$2.00, probably not to exceed upon a fair basis \$1.50. In the great majority of cases, however, it is more than \$2.00, and we are not prepared to say that, having reference entirely to the cost of service, a charge of \$2.00 would be an extravagant one. But this question is broader than the mere cost of service. It embraces the whole situation, in which the cost of service is but a single factor.

The United States Supreme Court said in the *Covington Stock-Yards Case* that a freight rate between two termini carries with it the cost of a delivery, and that the carrier is obliged to make such delivery and to provide whatever reasonable facilities may be necessary thereto without the imposition of any further charge. While the circuit court of appeals has held that this language does not apply to and control the present case, it, nevertheless, expresses the general understanding in this country. Ordinarily the single rate includes all terminal charges. Upon the European continent freight rates do not appear to be made in this way. There is, first of all, a terminal charge, which applies to all traffic, to which a charge for movement is added. In England at the present time a shipper may require the railroad company to segregate the rate, determining what part of it is fairly a terminal charge, and if he does not take advantage of the terminal facilities, he may demand under some circumstances a reduction in the rate to that amount; but, with us, the rate ordinarily includes the cost of delivery.

Not only is this ordinarily so, but it seems to have been always considered that the live stock rate to Chicago, the very rate under consideration, included such a delivery. Going back to 1865, we find that the railroad companies had provided in different parts of the city yards at which cattle could be delivered and sold. There were then four of these different yards, and every carrier entering Chicago was obliged to make delivery at whichever one the shipper might designate without additional charge. This was found expensive and inconvenient to the carriers, and for the purpose of obviating the inconvenience and diminishing the expense, they brought about the organization of

the Union Stock-Yards & Transit Company. That company originated entirely with the railroads, and its purpose was to provide a common market at which all carriers might unload the stock which they brought into Chicago. They thereby recognized the fact that a delivery could be made by them in this way cheaper and more conveniently than if each carrier provided facilities of its own.

That is undoubtedly true to-day. While the testimony in this case is not sufficiently definite to warrant an absolute finding of fact, it does show to a moral certainty that the carriers bringing live stock to the city of Chicago can better afford to be to the expense of transporting it to the stock-yards than to create yards of their own, if such a thing were now possible.

Previous to 1865, carriers at Chicago had always made delivery of live stock as a part of the Chicago rate. In that year they adopted this present mode of effecting that delivery. For thirty years these carriers, by their regular and uniform course of business, without protest and without any suggestion of hardship, have made delivery at the stock-yards in this way. They have thereby recognized the fact that the rate to Chicago carried with it a delivery to the stock-yards, or, at all events, carried with it whatever expense was necessary to transfer cars from the various tracks to the stock-yards and unload those cars at the stock-yards. No suggestion is made that the conditions are different today than they always have been. It is said that the rates on live stock have fallen and that they are now too low. If they are too low, they ought to be made higher. But no reason is assigned why the division of the terminal carrier at Chicago should be increased now without any increase of the entire rate.

Since 1865 the value of the freight terminals in the city of Chicago owned by these defendants has enormously increased. This increase in value has without doubt been much greater in proportion than that of the remainder of their tracks. They might with propriety, and perhaps they do, insist that they should be allowed an arbitrary charge for the delivery of freight at these expensive terminals. While, however, the expense to the defendants of making delivery of other kinds of freight at Chicago has unquestionably increased, their expense in making delivery

of this live stock, laying out of account the trackage charge which they were compelled to pay for the first time in 1894, has steadily decreased and is probably less today than it ever was before. Upon what theory, therefore, can the charge be justified?

The only new condition is that the Stock-Yards & Transit Company imposes for the first time this trackage charge. The Illinois Central Railroad Company estimates that the actual cost to it, including the trackage charge and the amount paid for unloading, of all the service embraced in this terminal charge is \$1.65. Probably a conservative estimate would be \$1.50. That is to say, the Illinois Central Company takes advantage of the circumstance that the Union Stock-Yards & Transit Company have compelled it to pay a charge of 80 cents to exact from the public, not only the 80 cents which it is compelled to pay, but also the 70 cents which it costs it to make delivery at the stock-yards and a clear profit, in addition, of 50 cents upon each car which it puts into those yards. We do not think, upon the whole case, that this is either just or reasonable. We see no reason why that company should not render now as a part of the service covered by the Chicago rate the same service which it has always rendered for that rate. We do not believe that these carriers should be allowed to add an arbitrary charge to the Chicago rate for doing a thing which they for thirty years have said was included in that rate and which we believe, considering the manner in which rates are made up and in which this rate has been made up, ought to be included in the rate.

We are inclined to think, however, that they may reimburse themselves for whatever they are compelled to actually disburse in the way of trackage charges to the Union Stock-Yards & Transit Company. That company is apparently entirely independent of the railway companies. They cannot and do not in any respect control its charges. This particular charge seems to have been exacted from them in opposition to the most earnest protest. It does not seem just, therefore, to compel them to absorb this charge. If the Union Stock-Yards had become the depot of the various carriers in such a way that it was their legal duty to make delivery at that point, this, of course, would be otherwise, for if they were under a legal obligation to get the stock to the Union Stock-Yards, they must

pay whatever additional expense the rendering of this service entailed; but it has been finally determined that there is no such obligation, and this being so, it does not seem, as a matter of fairness, that they ought to be compelled against their will to make good this extra charge. They might as a matter of policy choose to do so.

The total trackage charge imposed is in some cases 80 cents per car, and in other cases \$1.50 per car, and the testimony shows that about one half the total number of cars of live stock brought in by the defendants pay each charge, so that the average trackage charge paid the Union Stock-Yards & Transit Company would be about \$1.15. Strictly speaking, it is probably true that only the lower charge should be considered by us, since the public is entitled to the least expensive line. If the long line elects to compete, it must do so subject to its natural disadvantages. The various defendants admit that whatever charge is made must be a uniform one, so that a reasonable charge would probably be a reasonable charge for that road most advantageously situated. Upon this basis no carrier should be allowed to charge more than 80 cents per car trackage. We have thought, however, that under all the circumstances, a terminal charge of \$1.00 would be a fair one. This is slightly more than the trackage charge paid by some carriers and somewhat less than that paid by other carriers.

Our judgment is, therefore, that the exaction of a terminal charge of more than \$1.00 per car is in violation of the first and possibly of the third section of the Act, and that the defendants ought not to exact more than this sum. To order them not to do so would, however, be prescribing a rate for the future, and that, under the decision of the United States Supreme Court in *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. 243, we have no power to do. We shall make an order directing the carriers to cease and desist from charging and collecting the present charge of \$2.00. The Supreme Court in the case above referred to bases its decision upon the ground that the Interstate Commerce Act does not in express terms delegate to the Commission the power to prescribe a rate. It is intimated in that case that the power of Congress to do so, had it elected, was ample. Now, the fifteenth section of the Act to Regulate Commerce does in express terms provide

that the Commission shall, upon finding a carrier in violation of any of the provisions of that Act, order it to cease and desist therefrom. If this is equivalent to prescribing a rate for the future, it is within the express terms of the Act itself, and therefore not open to the objection that the power has not been delegated. What the practical effect of such an order may be, or whether it can be given any practical effect, remains to be seen.

The Cattle Raisers' Association asks reparation in behalf of its various members to the extent that they have been compelled to pay this unlawful charge. The intervening petitioner does not ask reparation, either in its own behalf or in behalf of its members. Indeed, the case apparently discloses that none of these charges finally fall upon the commission merchants at Chicago, since they are paid on account of the owners of the cattle. If the members of the Live Stock Exchange have suffered any damage it is of that indirect sort which results from the diversion of business from Chicago to other markets.

It was stated at the conclusion of the testimony that the matter of reparation would be held open to be further proceeded with in case it was held that the exaction of this terminal charge was unlawful.

In *Van Patten v. Chicago, M. & St. P. R. Co.* 81 Fed. Rep. 545, this matter of a recovery in case of the payment of an excessive freight rate came before the Circuit Court for the Northern District of Iowa. The plaintiff in that case had brought suit in the Circuit Court for the excess above a reasonable rate upon grain from points in Iowa to Chicago. It appeared that the rates charged and collected by the defendant railway company were the open published rates, and the court held that, this being so, the plaintiff was not entitled to recover. The position of the court apparently was that the publication of a given rate under the sixth section by the carrier fixed that rate; that when the rate was so published it became unlawful to receive any other or different rate, and that it could not be an unlawful act to demand and collect the published rate.

If this opinion should finally prevail, it would result that the public has absolutely no protection against an unreasonable rate. The decision of the United States Supreme Court in *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co*

supra, holds that the Commission, and therefore the court, has no power to correct the rate for the future. There is, therefore, no way in which a railway company can be compelled to publish a reasonable rate. Now, if a rate when published is conclusively presumed to be reasonable, and the shipper has no right of action to recover any portion of that rate, then there is absolutely no way in which the public can obtain any redress from the exaction of a rate, no matter how extortionate. In the discussion of this question it has been often said at the bar and sometimes intimated from the bench that, at common law, rates made by common carriers must be just and reasonable and that anything paid in excess of a just and reasonable rate might be recovered. If this were so, and the decision in the *Van Patten Case* is correct, then the enactment of the Interstate Commerce Law must have cut off even that remedy.

The eighth section of the Act provides that if any carrier shall be guilty of any violation of the Act in consequence of which damage is suffered, such carrier shall be liable to the person injured for the amount of the damage. Section nine provides that any person claiming such damages may proceed for their enforcement either by complaint before the Commission or directly in the Federal courts. The first section declares that all rates shall be just and reasonable, and the Commission has hitherto held that, if the carrier prescribed by its schedules and subsequently collected a rate which was unjust and unreasonable, it thereby violated the first section, and that any person who had paid this rate might by complaint to the Commission, upon showing that the rate was unjust and unreasonable and to what extent, obtain an order for the payment of damages in the amount that the sum paid exceeded a just and reasonable rate. *Railroad Commission of Florida v. Savannah, F. & W. R. Co.* 5 I. C. C. Rep. 13, 3 Inters. Com. Rep. 688; *Lehmann v. Texas & P. R. Co.* 5 I. C. C. Rep. 44, 3 Inters. Com. Rep. 706; *Perry v. Florida C. & P. R. Co.* 5 I. C. C. Rep. 97, 3 Inters. Com. Rep. 740; *Michigan Box Co. v. Flint & P. M. R. Co.* 6 I. C. C. Rep. 335.

While we recognize the fact as forcibly pointed out in the *Van Patten Case* that a suit for the recovery of the excess of an extortionate freight rate is neither a just nor an adequate remedy, we are inclined to adhere to our previous holding in this respect.

It is not, however, every case where the payment of an excessive rate carries with it reparation. Each case seems to depend upon its own equities. *Capehart v. Louisville & N. R. Co.* 4 I. C. C. Rep. 265, 3 Inters. Com. Rep. 278; *Potter Mfg. Co. v. Chicago & G. T. R. Co.* 5 I. C. C. Rep. 514, 4 Inters. Com. Rep. 223; *Loud v. South Carolina R. Co.* 5 I. C. C. Rep. 529, 4 Inters. Com. Rep. 205; *James v. Canadian P. R. Co.* 5 I. C. C. Rep. 612, 4 Inters. Com. Rep. 274; *Evans v. Union P. R. Co.* 6 I. C. C. Rep. 520.

We shall therefore continue the case for proof of damages, reserving all questions as to reparation until that proof is made.

Following the course adopted in *Independent Refiners' Assn. v. Western New York & P. R. Co.* 6 I. C. C. Rep. 378, the proper parties to make such proof are the members of the complainant association. The Cattle Raisers' Association, as an association, has suffered no damages.

An order will be made and the case continued in accordance with the foregoing views.

AMERICAN WAREHOUSEMEN'S ASSOCIATION
v.
ILLINOIS CENTRAL RAILROAD COMPANY *et al.*

Decided February 3, 1898.

1. Any person or association is entitled to complain before the Commission of failure on the part of carriers to publish and enforce transportation or terminal charges, rules and regulations, and that such failure results from special privileges allowed to shippers on many important lines.
2. In proceedings involving issuance of an order concerning the publication and enforcement of transportation or terminal charges, rules and regulations, investigation is useful to enable the Commission to determine what, if any, administrative order should be directed to defendant carriers, and whether such order should be made to apply to all carriers subject to the regulating statute.
3. Upon investigation of alleged unlawful practices of carriers in granting free storage of freights and other specified privileges to shippers. *Held*, That charges made by carriers for transportation and terminal services, and all rules and regulations which in any wise change, affect or determine the aggregate compensation paid therefor, are required by the statute to be shown upon their published rate schedules; and under such requirement it is the duty of all carriers subject to the Act to so publish and thereupon enforce each and every of their charges, rules and regulations concerning the storage of freights, diversion of cars to shippers' use, distribution of freight in part-lots, reconsignment of freight, and all kindred concessions or privileges to shippers, and to refrain from affording any such concession or privilege without due publication thereof in such schedules. That in view of the very general allowance in various forms of some or all of the privileges involved, a general order directed to all carriers subject to the Act to regulate commerce should be issued.

John Maynard Harlan, Percy Thompson, and E. K. Summerwell for complainant.

Edward Baxter and others for defendants.

REPORT AND OPINION OF THE COMMISSION.

YEOMANS, *Commissioner*:

The petition in this case, filed April 27, 1897, against a large number of carriers, states that the petitioner is a voluntary associ-

ation of warehousemen and forwarding agents, and that the proceeding is brought in the interest of members of the association and also on behalf of all producers, dealers and consignees engaged in the interstate transportation of freight articles over the principal lines of railroad in the United States.

The petition alleges, in substance, that defendants wrongfully damage the interests of members of the petitioning association, unjustly discriminate between shippers and consignees of freight, and otherwise violate the regulating statute, as follows :

By affording free storage of freights in various ways for some shippers but not for others.

By failing to collect demurrage charges on cars detained by favored shippers or consignees and exacting such charges from other shippers or consignees.

By storing only for some concerns large quantities of freight consigned to shipper's order at destination and making delivery thereof in small lots to persons designated by the shipper, or forwarding such smaller lots over its own or other lines to various points under direction of the shipper.

By also assuming expenses of unloading, loading and cartage for some persons and not for others.

By granting such privileges in violation of rules and regulations established by themselves, and under which shipments are to be billed out on the day received, removed from freight houses by consignees within 24 or 48 hours or other fixed period, and loaded in and unloaded from cars on tracks or sidings within like specified time, under penalty of storage charges in the one case or car demurrage charges in the other.

By failing and neglecting to include in their published and filed rate schedules the above stated privileges of free storage, free car service, free delivery of stored freight upon shipper's order to different consignees or forwarding of special lots of freight from quantities stored, as rules or regulations, changing, affecting or determining aggregate transportation charges or some part thereof.

The concluding allegations are to the effect that members of complainant, long established as warehousemen and forwarders, have been and are directly and greatly injured by these notorious, yet more or less secretly afforded, favors granted by defendants, and particularly so because such favors, as a rule, have been and

are granted to those engaged in shipping freight in large quantities and who have been regular patrons of members of the petitioning association; that the special privileges complained against materially assist and further the efforts of large industrial combinations to secure and control a monopoly of the trade in their respective lines of business; that these privileges to particular shippers or consignees, applied on particular kinds of traffic or in favor of shipments in large quantities, have been and are granted or allowed by defendants in violation of the Act to Regulate Commerce, and particularly of the first, second, third, fourth, sixth and seventh sections thereof.

After the filing of answers the case was fixed for hearing at Chicago. Upon pleas and motions to dismiss made by some of the defendants, the allegations set forth in the petition were held insufficient by the Commission because, while alleging acts and violations of law by all the defendants, there was no specific allegation as against any defendant, and the practices generally described in the petition were not alleged to result from any concerted action or agreement between the companies. Under leave then granted, an amended petition was filed on August 16, 1897, containing special charges against a number of the defendants, and answers thereto were also filed.

The positions taken by defendants in their answers are generally described as follows:

1. General denial.
2. Admission as to some or all facts alleged, but denial of any violation of law.
3. Admission as to some or all facts alleged and that the privileges or practices involved are or may be unlawful, but with averments that allowance of storage and other privileges described in the complaint is forced by the prior action of competing carriers.

Some of the answers aver that the storage privilege has been granted to all applying shippers so far as provided storage facilities might permit. None of the defendants distinctly claimed that its posted schedules or rate sheets contained notice to the public that such privileges could be availed of by shippers generally.

The Atchison, Topeka & Santa Fé Railway Company admitted in its answer that some companies have discriminated between

shippers by giving free storage and free terminal facilities, stated its belief that the practice is of doubtful legality, and that it only permitted the privilege when forced to do so by the like practice of competing railroads; admitted that railway companies cannot justly act as warehousemen without exacting reasonable charges for such service, and that they should also exact reasonable demurrage charges, and stated its hope that the Commission might be able to restrain the carriers from unduly favoring some shippers or discriminating against others by omitting to carry out their established rules and regulations concerning storage, demurrage and other terminal charges. This carrier also prayed that all railroad companies be directed to have and establish uniform rules and charges for storage, demurrage or warehousing, and that such rules and charges be required to be published and included in tariffs and schedules as required by law, when the same may be legally done. Positions taken at the hearing by counsel for several other defendants largely support the prayer of the Atchison, Topeka & Santa Fé.

A motion to dismiss the petition was made by the Michigan Central Railroad Company on the following grounds: That the petitioner has no standing to maintain the proceeding on its own behalf or on behalf of its members; and that the petitioner has no right or authority to file or maintain said petition on behalf of shippers or consignees, customers or respondents. Other defendants also asked to be dismissed for similar reasons.

We appreciate the force of the fact that the members of the petitioning association are warehousemen and forwarders, and do not appear here as shippers or consignees, and that storage and other facilities afforded indiscriminately by carriers, while diminishing the business of warehousemen, might not be opposed to the interests of the shipping public. But the petition is not confined to complaint that particular railway practices unlawfully discriminate between shippers, and that certain privileges allowed to shippers by carriers result in wrongful damage to members of the complaining association. Complaint is also made by petitioner of failure, on the part of carriers in various sections of the country, to include in published rate schedules all their terminal regulations which effect compensation for the receiving, forwarding, handling, and delivery of freight, and further failure on the part

of many carriers to adhere to rules and regulations which they have published in the manner required by law. Where, as in this case, such violation of plain public duty is alleged to result from special privileges which have become common on many important lines, complaint to the Commission is not inappropriate, and any person or association is entitled to bring and maintain the proceeding. In such a proceeding, investigation is useful to enable the Commission to determine what, if any, administrative order should be directed to the defendants or, it may be, to all carriers subject to the law, if that course should seem best under all the circumstances. With this consideration in view, and bearing in mind also that the arguments in this case have largely referred to the duty of defendants to publish all these various privileges, to afford them to all shippers when published, and not to allow them if not published, we think that none of the defendant carriers can have any substantial ground for claiming dismissal. Our conclusion in this respect is further fortified by the opinion that this investigation should be made the basis for a general order concerning the publication and filing of rules or regulations covering the practices in question.

Hearings have been had in this case at Cincinnati, Louisville, St. Louis, Kansas City, Chicago, Detroit, Cleveland, Buffalo, New York, Philadelphia and Washington, and upon such hearings, various schedules of defendants on file with the Commission, and the general record herein, the following facts are found:

FACTS.

1. Common carriers by railroad in the United States have never followed a general custom of permitting their freight depots to be used for storage or general warehouse purposes, or of allowing their cars to be retained in the possession of shippers or consignees beyond a reasonable time for loading or unloading freight. It has been the common understanding, based upon specific rules and regulations issued by the carriers from time to time, that freight depots, cars, and sidings of carriers can only be kept in condition for the necessary reception and handling of goods in the daily course of transportation business by prompt forwarding

of freights and quickly completing delivery of transported goods to the consignees. Among the rules or regulations commonly in force upon railways and intended to effectuate the prompt shipment, carriage and delivery of freights, are the following:

a. The loading of cars furnished for shipments within 24 hours or other short specified time, under penalty of a demurrage charge for detaining the cars, which is in most cases \$1.00 for each additional day or fraction thereof; and a similar regulation is applied to the unloading of cars by consignees on team tracks or private sidings.

b. The removal of goods from freight houses within a specified time, usually 24 or 48 hours, after notice of arrival to consignee, under penalty of storage at the freight house or at public warehouse and collection of additional charges therefor.

In various ways these generally described regulations are specifically stated in published freight classifications, car service rules, rate schedules, special circulars, so-called billing instructions, or bills of lading forms. They amount to conditions imposed by carriers upon the shipment, transportation and delivery of freight, which are not to be disregarded by shippers or consignees without incurring liability to additional expense.

Another rule of railway operation seldom published, but generally understood to exist, is that freight must be billed out by shippers on delivery at the shipping station.

Freight consigned to the shipper and subject to his order is a long-established shipping custom, and it is not unusual to find in the billing an instruction to the freight agent at destination to notify some particular firm or person. Thereupon the person or firm notified presents the indorsed bill of lading or other order recognized by the carrier and obtains the goods after paying such freight charges as may be due. Freight consigned to "shipper's order" is subject to the carrier's rule for removal from freight house or cars within the time specified in its schedules as well as freight which is forwarded by the shipper to some other named consignee.

2. The above mentioned rules are thoroughly understood by shippers and consignees. Shipments generally are made and received under the conditions thereby imposed and in the belief

that if they are not observed the penalties stated will be enforced. The frequent application of car demurrage or other penalty, when such rules have been disregarded, has also caused the great majority of consignees to keep carefully within the limits of time allowed. Any relaxation of established and commonly enforced rules of carriers for the prompt removal of goods from freight depots or sheds, or for the loading or unloading of cars on railway tracks or private sidings, constitutes an obvious advantage to the shipper or consignee so favored, and according to the extension of time permitted such exceptional use of railway facilities is often of no little value. A manufacturer with a full warehouse enjoys no slight privilege if he can at little or no charge store goods for considerable periods in the freight sheds of the railway or in some general storehouse under its dominating influence or control; and the like profitable result is obtained if a similar privilege is accorded to him at some general distributing market or other convenient place of concentration, distribution or reshipment. Other and unusual advantages are also realized through opportunities so afforded to promptly fill orders from such stores; to often sell small lots of goods delivered at destination without paying less than carload charges thereon, except upon reshipment from the point of concentration; to have the railway agent or the warehouse manager under railway control act as his forwarding agent without charge; to compete with wholesale merchants in various sections without the cost of warehousing, cartage, and some other expenses necessarily involved in the carrying on of a locally established enterprise. Although the general rules above stated are in effect upon defendant lines and upon railways generally, it is fairly established by admissions of defendants or by the testimony that they are not invariably enforced. They are waived usually when application is made by shippers or consignees; and while on some roads it is claimed the waiver is in no instance refused when applied for, it is not shown that the privilege is commonly known or that the method of obtaining it is generally understood. Some carriers only afford the storage privilege up to the limit of their facilities for so doing. Most of the shipments for which storage is shown to have been granted are large consignments, and nearly all the railway patrons mentioned as having secured it evidently belong to the

class of large shippers. The sole reason advanced for allowing the storage privilege has been that refusal to grant it would divert the freight to competing lines. Under prevailing transportation conditions, when a concession of value is granted to shippers or consignees by one railroad company a like or equivalent concession must be allowed by its competitors, if they do not choose the alternative of losing the traffic in question.

3. This exceptional privilege of storage is granted in various ways. Not all of them are plainly described in testimony nor is the resulting advantage to shippers fully shown. One method is for a shipper to send carload freight to a specified destination consigned to his order. By arrangement with the carrier the freight is kept in the car, freight house, or some warehouse which the carrier controls or in which it has an interest, and upon orders of the shipper or his representative issued from time to time the freight is delivered in small lots by the carrier or warehouse agent to designated persons. These persons are the actual consignees, and the shipper is enabled by this means to avoid paying the higher less than carload rate on the several small consignments and also to reap various other advantages generally referred to above. Agents of the railway or its warehouse often act as forwarding agents for the shipper, and upon his order part lots of consignments held in store are reshipped by such agent to various local destinations on the same or other lines. In some cases a charge is made for storage, and in others not. If there is, it diminishes the shipper's advantage to that extent.

Such special facilities of storage, handling, cartage, distribution, and reshipment of less quantities, afforded either without charge or at extremely low compensation for the aggregate service, amount approximately, if not substantially, to providing the shipper with branch business houses in large cities. As a rule, none of them is essential to known and well-defined services involved in receiving a particular shipment, carrying it to destination, and in due course actually delivering it to a *bona fide* consignee who may either be the shipper, his assignee, or some other person designated as consignee at the time of shipment. Affording any such additional facility to a shipper without charge or at less than its full cost or value necessarily diminishes the business expense of that shipper, and results in affecting the aggregate charge

made against him for transportation as certainly as if such transportation charge were actually reduced when collected. To the shipper, the extent of such reduction in transportation cost is represented by the value to him of the additional privilege so allowed. To the carrier, the extent of such reduction in its compensation is measured by the cost to it of maintaining the special practice. Although the carrier may exact its own full cost for rendering or providing the special or additional service, or indirectly obtain full recompense for its necessary outlay in that respect, if the special service be in any manner withheld from some shippers while freely provided for others, there still results a discrimination involving damage to the excluded shipper whenever the value of the service to the shipper exceeds the carrier's charge therefor.

4. A number of transportation rules and regulations, most of which operate to change, affect or determine aggregate charges, are contained in each of the three freight classifications generally in force, respectively, throughout different large sections of the country. These classifications, known as the Official, the Southern and the Western, provide that carload rates shall apply only when a carload is shipped from one station in one day by one shipper to one consignee and one destination. In the Official and Southern, agents are prohibited from distributing carload freight to two or more consignees. The Western provides that carload rates are not applicable on freight consigned to railroad agents. Each classification calls attention to existing car service or demurrage rules. The Official specifies the requirement for removal of freight within 24 hours after notice, which is generally given, and this rule is stated in bills of lading; and also sets forth the "uniform bill of lading" used by carriers in the East. The Official Classification also contains rules requiring that notice of arrival be sent to one party only, and that agents make but one expense-bill for the charges on the entire carload at the carload rate; but that when a consignee requests delivery to more than one party, such delivery will be made provided the consignee accepts the notice of arrival, pays charges on and receipts for the entire shipment before any part is delivered. These last mentioned rules were added February 10, 1897. On June 1, 1897, the following provision was inserted in this classification: "When

carload shipments of property are consigned to shipper's order, charges prepaid, and separate deliveries thereof are requested to be made to two or more parties, it is permissible to make such separate deliveries, provided the entire shipment is receipted for by one party before any part of such consignment is delivered."

In neither of the classifications, nor in any other schedule referred to or indicated in the evidence, is there publication of the fact that storage in freight depots, sheds or houses of the railway will be afforded without charge or at any specified charge, or that freight may be stored at particular warehouses without charge for any length of time or for any special charge whatsoever. Neither is any mention made in such schedules of a privilege of reshipping part lots of a given consignment over the same or other lines upon direction given to agents, or that car demurrage rules currently supposed to be in effect are not in force or will not be applied. Certain rules are published, however, which apply on the storage of flour and mill stuff at eastern points, and some other package freight for export may be covered by schedules not examined.

The findings following are based upon evidence concerning the practices of particular defendants in various cities.

CINCINNATI:

5. The "Panhandle Storage Warehouse" is located in the second story of the Pittsburg, Cincinnati, Chicago & St. Louis Railway Company's freight house, and is operated by or under the control of that carrier. Freight is held in the warehouse four days before it becomes subject to storage charges. Carloads of cereals consigned to the shipper were held in the warehouse subject to shipper's order for delivery in part lots to various parties. Reports of such deliveries were made to the auditor of the railroad company and statements of stock on hand were rendered to the shipper. The regular storage rate was charged for all material held beyond the four days' limit, but no charge was made for distribution. Carloads of matches also consigned to shipper's order were held and delivered in like manner, and occasional reshipments were made to points beyond. What charges were actually made for the storage does not appear. A distinct

arrangement for the distribution of consignments is made with each separate shipper.

6. The "Big Four Storage Warehouse" is operated or controlled by the Cleveland, Cincinnati, Chicago & St. Louis Railway Company. Warehouse "A" is used by the company as a depot on the first floor, and as a warehouse on the floor above. Reports are made to an officer of the railway company, and all freight, with the exception of flour and sugar, is charged for storage dating from the time it is received at the warehouse. Flour and sugar are stored four days free before becoming subject to charge. The warehouse is allowed a sum per car by the railway company for sugar and flour so held. After the four days, storage rates of 3 cents a barrel on flour, and 4 cents a barrel on sugar, are charged to owners of the freight, but for what time such rates apply is not definitely shown, though other testimony indicates that they constitute charges for a month or fraction of a month.

Sugar consigned by two refineries to their agents at Cincinnati was received, stored, and bills for accrued storage charges were rendered and collected. Coffee shipments were held at the depot four days, and then sent to the warehouse. Some of this coffee was distributed upon orders issued by the shipper's agent. Storage was charged on the coffee after it was sent to the warehouse.

7. The "C. H. & D. Warehouse & Storage Company" is located in a building, the first floor of which is occupied by the Cincinnati, Hamilton & Dayton Railway Company for its freight depot. The two companies are distinct corporations, but what community of interest exists between them is not fully shown. A general storage warehouse business is carried on. Reports of warehousing are made to the president of the company, who is also the freight traffic manager of the railway company. Freight is delivered by the railway company to the warehouse for storage. Free storage is not allowed in the warehouse. Carload shipments of commodities, including paper and furniture, are received at the warehouse for distribution, subject to the order of the consignors, and a charge of \$5.00 per car is generally made on freight so distributed. Whether such charge includes storage charges does not appear. The railway company holds freight four days

before putting it in storage. The Cincinnati Elevator Company is a corporation engaged in the storage of grain and various other commodities. The railway company is a stockholder in the elevator company, but it has not a controlling interest. A storage charge is made against the railway company for any freight stored by it with the elevator company.

LOUISVILLE:

8. The Cleveland, Cincinnati, Chicago & St. Louis Railway Company makes no charge for storing freight in its depots at Louisville. Rules requiring loaded freight cars placed on siding or team track to be unloaded within 48 hours are in force and generally applied. Upon arrival of house freight, notices are sent to consignees requiring removal from the freight depot within 48 hours under the penalties of owner's risk and liability to warehouse charges. Freight is nevertheless kept in the freight houses for considerable periods without charge. This defendant stored and delivered on orders for part lots carloads of coffee, pickles, jellies, and other commodities. Final delivery of the coffee was made within about two months. Canned goods were held an average of ten days before the delivery was completed.

9. The Louisville & Nashville Railroad Company during the years 1896 and 1897 received and stored carloads of coffee in cases and sugar in barrels and delivered the freight upon orders of shippers, their agents, or consignees. No charge was made for the storage or distribution. The coffee was held in storage for several weeks and some of the sugar between two and three months.

The company has the usual car demurrage rule in force, and the customary notice to remove house freight is given upon arrival of the goods. These notices are repeated and continue to be sent until the freight is removed. A practice of sending house freight to public store if not removed within 48 hours is not invariably enforced. Sometimes considerable time is required to locate the consignee. When the shipments are large it may be that the goods could not with reasonable handling be removed within the two days. Goods are nevertheless permitted to remain in store

at the freight house for considerable periods, three weeks or more in some cases, after expiration of time stated in notices to consignees. On the other hand, numerous shipments in carloads and less quantity were sent to public store in 1896 and 1897. Sugar is delivered from stored consignments upon orders directing delivery of a certain number of barrels to a jobber or trader. At the date of the hearing several carloads of sugar were in store in the freight house. One shipment had been there over a month. Sometimes nine-tenths of a shipment is delivered out within two or three days. If the company cannot get rid of freight that is liable to injury while stored in the freight house that is one consideration which prompts the company to send it to the public warehouse. Shipments distributed upon more than one order are first receipted for as a whole by some consignee or authorized agent, and receipts are also taken from the persons to whom part lots are delivered. There is no evidence of special pre-arrangement concerning the storage of coffee and sugar shipments, and there is testimony by the local railway agent that any shipper of these or of other commodities "received under similar circumstances" would be accorded the like privilege; but that fact is not published in the railway schedules or otherwise. The usual notice to remove freight is sent to all consignees. No charge whatever is made for storage of freight in the company's depot. The local agent testified that allowing free storage on coffee, sugar, and other commodities was a general custom in Louisville; that he also had a "pretty good idea" of how freight is handled in different parts of the country, and did not believe there was a line in the country but handled those commodities in the same way.

10. The defendants, the Baltimore & Ohio Southwestern Railway Company, the Pittsburgh, Cincinnati, Chicago & St. Louis Railway Company, and the Louisville, New Albany & Chicago Railway Company (now Chicago, Indianapolis & Louisville Railway Company) also afford free storage of freight in their depots and distribute consignments in part lots upon orders, notwithstanding arrival notices given by their agents. The practice is general with all carriers at Louisville, but it is not a published rule or regulation. The car service regulations, including car demurrage, are now generally enforced. These are made by agreement between the different roads entering the city. The

arrangement was discontinued in February, 1896, but it was renewed and put in force on August 1, 1897.

St. Louis:

11. The St. Louis, Keokuk & Northwestern Railroad Company stores flour in a separate warehouse or depot for indefinite periods and delivers it out in part lots upon orders, without charge. Other package freight is also kept in freight houses without cost to the owner. The usual notice to remove is sent to each consignee on arrival of the freight. Some freight, including flour, has been sent to public warehouse, under the option reserved to the company in the notice. The flour kept in free storage in the freight house is sometimes insured by the owners. The free storage privilege is not published as part of the company's rate schedules.

12. During the years 1896 and 1897 the Chicago, Burlington & Quincy Railroad Company carried carloads of soda shipped by a firm in New York City, consigned to order of the shipper, and destined to East St. Louis. The soda was unloaded into the freight house, and upon orders received from the New York firm delivery in part lots was made to designated parties. The railway agent made report of these deliveries to the shipper. The storage extended over indefinite periods, and the terminal service so rendered was without charge. Carloads of sapolio were handled, stored and delivered in like manner and without cost to the owner. No other shipments were treated precisely in that way, but it does not appear that the privilege was denied to any applying shipper. Delivery in part lots is also made by this carrier upon order from consignee. The notice of arrival of freight and to remove the same within 24 hours is sent out, as a rule, by messenger or mail.

13. The Wabash Railroad Company sends out a notice concerning freight delivery at St. Louis which requires consignees to remove freight and pay charges within 24 hours, otherwise the freight will be stored at their risk and expense. The notice also states that demurrage will be charged on all cars not unloaded within 48 hours after arrival. The company has stored carloads of flour for various consignees in its freight house in St. Louis. Such storage was without charge and extended over periods of from

ten to thirty days or more. The agent of the company makes it his business to get this stored freight moved as quickly as possible. Other freights, including broom corn, wool, and dried hides, are accorded a similar privilege. There is no special previous understanding. The freight is simply left in the freight house and taken away as soon as needed by the consignee. As to some commodities, particularly flour, it seems that more is sent in than commission men or other dealers are able to immediately handle. Car demurrage is enforced on team track freight in St. Louis, but such car service regulation is not enforced in East St. Louis.

14. The Toledo, St. Louis & Kansas City Railroad Company issues the usual notice of arrival of freight at its depot in East St. Louis, and such notice also provides that car demurrage of \$1.00 per day will be charged on cars detained beyond the 48 hour limit. The rule is also specified in the bills of lading. The car demurrage rule is not enforced. No charge is made for holding carload freight. Cars loaded with paper consigned to publishers of St. Louis newspapers are held by the company for as long as four or five months without charge, and are delivered, usually a car at a time, by the St. Louis Transfer Company, as ordered by the consignee. Freight is usually paid when delivery actually takes place. Such other freights, as coal, coke, and salt, are held in the same way, but no package merchandise to speak of is held as the printing paper is. At the time of the hearing the company was short of cars. There is also some extra switching involved in the practice of holding the loaded cars on track. All the roads on the east side (East St. Louis) afford the like privilege. At the time of the hearing this company was holding between 20 and 25 cars of paper in the way mentioned, and some of it had been so held for more than a month. Sometimes cars ordered for loading are delayed because of inability to secure the prompt taking away of freight at the company's East St. Louis terminal.

KANSAS CITY:

15. During the years 1896 and 1897 the Union Pacific Railway Company received carloads of dried fruit at Kansas City consigned to two firms, and stored the same free of charge, subject to consignee's orders for delivery. In some instances goods

were carried in the warehouse subject to consignee's orders "for a month or more." This privilege was granted upon application to the agent of the railway and only to the two firms above mentioned. Other freight is promptly removed and other shipments of dried fruit have been carried by the railway for other consignees, but they have not requested the privilege. The privilege of storage was refused to a commission merchant handling dried fruits from California, who testified that he asked for storage, but was compelled to store unsold parts of the consignments himself.

While this carrier has in force the car service rule of forty-eight hours, if a car is ordered to the team track, there partly unloaded, then switched to the company's warehouse, and its contents unloaded by the railway, no charge for car service is made. Neither is any charge for the extra switching imposed. The usual notice to remove goods within 24 hours after arrival is given.

16. The Chicago, Rock Island & Pacific Railway Company notifies consignees at Kansas City in the usual way to remove freight, but allows 36 hours. The only instance in Kansas City where this company was shown to have permitted freight to remain in cars for team track delivery without applying the 48-hour demurrage rule was at a time when the track was being repaired.

17. A shipment of canned fish was held two or three days on track of the Wabash Railroad Company under instruction to "hold," and was then ordered to the railway warehouse, unloaded and stored and distributed upon consignee's order. The storage and other terminal service was without charge, and the freight was not fully delivered until about 30 days had elapsed.

18. The Chicago, Milwaukee & St. Paul Railway Company, during the years 1896 and 1897, provided free storage for carloads of printing paper consigned to various newspaper publishing companies; carloads of toothpicks, and a carload of canned fish. The paper was sometimes held nearly or about thirty days. The toothpicks were stored in March and April, 1897, and some were still held in storage on September 20, 1897, the date of hearing in Kansas City. The carload of fish arrived November 23, 1896, and final delivery was made sometime in February, 1897. These shipments were all held subject to order for delivery in

small lots. The shipments are held in store by the local agent, under directions received from the division freight agent or other superior officer, and there is usually some pre-arrangement. There is no evidence that the storage and distribution privilege has been refused to any applicant, but the company does not pretend to provide storage beyond the vacant space in its warehouse. The notice which is mailed to consignees provides for car demurrage beyond the 48-hour limit and for subjecting house freight to storage if not removed within 15 days.

19. The Chicago Great Western Railway Company makes no charge for the storage of freight. Consignees requesting to have their shipments held after arrival are made to sign the following release:

"In consideration of the fact that no charge is made by the Chicago Great Western Railway Company for storing or warehousing the same, the undersigned hereby releases said railway company from, and indemnifies it against, any and all claims for damages on account of injury to, or destruction, however caused, of any and all property owned or controlled by the undersigned which shall, with knowledge of the undersigned, remain for more than forty-eight (48) hours in the freight house of said railway company at _____."

This release is not always given for goods held in free storage. The carrier's agent always endeavors to have goods removed as quickly as practicable. This company has provided free storage for carloads of printing paper, a carload of wash boards, and two carloads of canned goods. They were held subject to order of consignees. The privilege of free storage is made to depend on the condition of the freight house. Requests have been refused when there was no vacant space in the freight house. The company issues notice to remove within 24 hours, and the notice states that the freight will be subject to storage charges after that time. Some days prior to the hearing, storage of a car of freight was denied to one consignee on account of lack of space in the warehouse. Cars switched for track unloading are left usually some time beyond 48 hours, if desired.

20. The Atchison, Topeka & Santa Fé Railway Company receives consignments of cheese for commission merchants in Kansas City, and stores the same in a cold storage house free of charge for "various lengths of time—from three days to three weeks and

a month." Other perishable freight is also stored free for consignees. House freight generally is held in store without charge for practically indefinite periods when the agent cannot induce consignees to remove it. Sometimes freight is sent to a public store house. The practice seems to be controlled by the Auditor of Freight Receipts.

The general agent of the company testified concerning the free storage practice that it is a form of competition in soliciting shipments over the Santa Fé and other railroads; that if the Santa Fé should not afford the privilege it would not obtain the traffic, and that it is decidedly detrimental to the company's business. This carrier enforces the car demurrage rule, but sometimes cars are partially unloaded by consignee, then switched to the warehouse, and unloaded and stored by the company without charge.

21. The Missouri Pacific Railway Company held carloads of garden seed consigned to the railway company's agent in 1896. These consignments were divided and distributed by the agent and also forwarded by him over various lines from Kansas City. This was done under a special arrangement. In that year parts of shipments for a Kansas City firm were held in store for several months without charge, the consignee refusing to move them and claiming that arrangements had been made in New York for storing the goods at this point. Woodenware was also kept in free storage for a St. Louis firm and delivered in part lots upon order. The company's agent issues notice on arrival of freight not carried away by transfer companies that if not removed within 24 hours it will be stored at owner's risk and expense. It also enforces the 48-hour car service rule.

22. The Hannibal & St. Joseph Railroad Company (part of the Burlington System) is shown to have stored free of charge to the owners, and subject to their orders, carloads of fruit jars, one carload of toothpicks, and carloads of printing paper in rolls. The toothpicks were held in the station "about two years," and the railway agent testifying understood that they were shipped over the Hannibal & St. Joseph road under agreement with the agent at Boston that they would be so held. The paper was held for indefinite periods. The practice was discontinued because too much space was occupied and the regular business of the carrier was embarrassed, and because the service could not be

provided for everybody. On the other hand, the general southwestern agent of the Burlington System (which includes the Hannibal & St. Joseph road) testified that competition must be met if his roads wanted business and "if we are asked to give free storage, we have to."

CHICAGO:

23. The Chicago, Burlington & Quincy Railroad Company received, during the years 1896 and 1897, shipments of soda, sapolio, cement and sugar, and held them in storage in the railroad company's building subject to instructions from the shippers. Some of the shipments were consigned on through billing to points beyond; others were held awaiting billing instructions for periods of time varying from a few days to a few weeks and occasionally for about two months. Neither the road nor the agent received any compensation for storing, holding, forwarding or distributing the freight. It is the custom, in case the warehouse in which the material is stored is crowded, to hold the same in cars until directions are received from the general freight agent of the road.

The road agrees with shippers to hold and store their shipments, subject to shipping directions from time to time. The freight is received, stored without charge, forwarded and distributed to the various consignees on orders from shippers. To obtain these concessions, arrangements are made with some officer of the company, but there is no showing of discrimination between applying shippers or consignees.

24. The Chicago & Grand Trunk Railway Company held in storage shipments of crockery consigned to a Chicago firm. Part of the consignments was taken immediately from the warehouse, part within a week or ten days, and some of the freight remained three or four months. The handling, unloading, storing and delivering of the crockery were free of charge to consignees. Beans, canned corn, fish and sugar were also received, stored free of charge, and delivered, in like manner. About 8,000 barrels of sugar were held at one time, and about 25 carloads of printing paper were received at the warehouse, stored free and delivered in small lots subject to order.

It is the custom to unload all so-called warehouse or package

freight into the warehouse before notice is sent to consignees, and no charge is made for handling, storing or delivering any freight.

25. The Chicago & Northwestern Railway Company, during the years 1896 and 1897, brought carloads of dried fruit shipped from California, and these were unloaded and stored by the railway company for from thirty to sixty days or more, subject to orders of the different consignees. Carloads of wine in barrels and casks were also carried from California, stored free of charge, and delivered upon orders of the consignees. Canned goods were stored free of charge and delivered in lots upon orders of consignees. On wine from California the company received manifests containing "instructions to deliver according to certain marks." They were usually consigned to the order of the shipper, and delivered in small lots to different parties by the agent. This freight was shipped under a carload rate, and each of the parties receiving a part of the carload lot paid the carload rate "proportionate to the weight of each lot."

The storage service is rendered for all sorts of freight, upon request. At the date of hearing large quantities of freight, estimated at thousands of carloads, were stored in Chicago awaiting shippers' orders.

26. All package freight of the Chicago, Rock Island & Pacific Railway is delivered through the freight house at Chicago, and is held there awaiting disposition by consignees, except where special request is made to have it delivered from the team track. No charge is made for storage. This is true also as to the Baltimore & Ohio Railroad Company. No special shipments held for storage, distribution or reconsignment were shown as to these carriers. The carriers at Chicago all notify consignees of the arrival of freight, and in the notices the right to charge storage is reserved.

27. A shipper of poultry and produce at Fort Dodge, Iowa, purchases in small lots, and upon application to the agent of the Illinois Central Railroad Company at that point, is furnished refrigerator cars, which are held by him from three to six weeks for the purpose of loading. He pays nothing in addition to the freight rate for the privilege of holding cars. It does not appear that this privilege, which has been granted for a number of years, is denied to others at that point.

A dealer engaged at Cresco, Iowa, in buying, shipping, and handling produce, has, upon application to the agent of the Chicago, Milwaukee & St. Paul Railway at that place, been furnished with cars which he held for two or three weeks, and used for keeping poultry and other produce until carloads accumulated. No charge for this use of the cars was made. He is the only shipper of produce in that way from Cresco.

A shipper at New Hampton, Iowa, obtained refrigerator cars upon application to the local agent of the Chicago Great Western for loading and shipping produce in the manner above described, and held the cars from three to six weeks without charge. He is allowed carload rates. Other shippers at that point ship in small lots at less than carload rates, but it does not appear that they are denied the carload privilege.

DETROIT:

28. During the years 1896 and 1897, at its freight terminals in the city of Detroit, the Michigan Central Railroad Company received and stored interstate freight free of charge for various shippers or consignees. Freight so stored was delivered from time to time in small lots upon orders of the owners.

During those years the company re-shipped and forwarded such freight, and in some instances divided the consignments and sent part lots to various destinations without additional charge.

The railroad makes no charge at Detroit for storage allowed to any shipper or consignee. When the warehouses become filled, notice to remove is issued, and if not removed the property is sent to the public store. The car service charge is collected for the detention of all cars beyond a limit of forty-eight hours, unless the authorized officer decides that it should not be collected.

Sugar and other package or warehouse freights when delivered from cars on team tracks are not subjected to demurrage charges on failure to unload within 48 hours. The company has four warehouses in the city, one is used for sugar, another wholly for the storage of flour. Distributing and forwarding is done through a trucking or transfer company. Starch, peanuts, sugar and paper and some other freights are frequently consigned to the trucking company. This company, called the Ferguson Truck Co., receipts for goods so received. Only carload package freight is stored free. Less than carload freight must be promptly removed. The stored freight is kept without charge for indefinite periods.

29. The Lake Shore & Michigan Southern Railway Company stored a carload of prepared oats from the latter part of June, and delivered it out on order of the consignee. Final delivery was not made until August 17. Rolled oats, canned goods and other freights are held and delivered in like manner. No discrimination is made between shippers or shipments. All consignments are permitted to remain in the warehouse without charge until taken away, unless the house becomes crowded, and then the company takes steps to compel removal.

30. The Grand Trunk Railway Company stored free of charge and for indefinite periods consignments of soap, tobacco, paper in rolls, flour, bacon, rolled oats and other freights, and held them subject to orders for delivery in small lots. The distribution and delivery is done through a firm of carters with which the company has a contract. No denial of the privilege is shown, but the agent testified that if the company should advertise to the public that anybody could leave goods in its warehouse as long as might be desired he was "afraid we would be swamped."

31. In Detroit the practice of charging for storage in railroad warehouses ceased about ten years ago. At that time several warehouse enterprises were started in the city. The usual notice to remove freights and containing the storage and demurrage penalties are sent out on arrival of goods.

CLEVELAND:

32. The Cleveland Terminal & Valley Railroad Company, during the years 1896 and 1897, stored free of charge one carload of agricultural implements, one carload of rice, carloads of paper and carloads of fruit jars. No charge is made for storage in this defendant's freight house.

The paper was stored under an arrangement whereby a portion of the railroad company's "old warehouse" was reserved, and the paper was held there indefinitely in consideration of a rental to be agreed upon afterwards. Under this arrangement the paper was held about four months, but up to the date of the hearing no demand had been made for the use of the building for the time so occupied. Car demurrage is not usually enforced by the company on what is called house freight. The company has made no charge for storage to any consignee.

33. The Lake Shore & Michigan Southern Railway Company, during the years 1896 and 1897, received and stored free of charge from three to twenty-five days in its freight house, and in some cases for about ten days in cars on its tracks, carloads of sugar shipped by two refining companies. The sugar was delivered upon orders from shippers sent by letter or telegraph. Carloads of printing paper in rolls were also received, unloaded in the freight house, and delivered, usually in part lots.

About ten days previous to March 1, 1894, a nail company delivered between 2,400 and 3,000 kegs of nails at this defendant's freight station, and the freight was stored there free of charge until shipped out on the date mentioned.

This defendant company was requested some years since by a storage company to give free storage for twenty carloads of harvesters, but the request was denied because of insufficient space in the freight house. The same privilege was requested of the Cleveland Terminal & Valley road, but refused.

34. The New York, Chicago & St. Louis Railroad Company does not charge for storage in its freight house, but its depot facilities are limited, and so called package freight is held in cars until unloaded and is exempted from car service charges. A statement filed by this defendant sets forth that from July 1, 1896, to August 1, 1897, 55 carloads of sugar were on the track an average of 7 days. The time would run from 1 day to 30; most of them were held 1, 2, or 3 days. Eight carloads of printing paper stood on the track an average of 51 days. The contracting agent of this road testified that in soliciting shipments of printing paper for his line he was asked to provide storage for the paper in house or cars until the consignees should be ready to take it away, that he was unable to afford such storage facilities, and the result was that the road lost the business.

35. The Erie Railroad Company received and stored free of charge carloads of printing paper, sugar and coffee. The consignments of paper and coffee were held subject to order for delivery in part lots.

36. Sugar in carloads was stored free of charge subject to shipper's orders in the warehouse of the Pennsylvania Company and there held for twenty days or thereabouts.

37. The Cleveland Storage Company was charged car service

by the Lake Shore & Michigan Southern Railway for detention of cars loaded with harvesters from the McCormick Harvester Company, but it declined to pay. It finally paid "one dollar" for car service "under protest," and the railway company never tried to collect the remaining \$70 or \$75. The reason stated for declining to pay the charges was that the railway company was carrying carloads on track for others.

The manager of the Cleveland Car Service Association from November, 1889, to about April 1, 1897, testified without contradiction that "the shippers had been abusing the privilege and holding cars to suit their own convenience for years," and that the association was formed to correct this evil; that he had found a great deal of discrimination as between shippers; that "large shippers were exempt from car service almost entirely," while small shippers were made to pay; and that agents were able to use their discretion in determining what should be called house freight and exempt from car service rules. This witness had retired from the management of the car service association at the time of the Cleveland hearing. All the carriers at Cleveland issue the usual notices to remove freight upon arrival, and under these notices property not removed is liable to storage or demurrage charges.

BUFFALO:

38. At this city, the Lake Shore & Michigan Southern Railway Company stored in its freight house carloads of prepared oats which had been consigned to its Buffalo agent, and held the consignments subject to shipper's orders for delivery to various parties. The service was rendered without charge. The like privilege was granted to shippers of raisins, peanuts, salt and pork. The privilege was refused in some cases because the shippers could not or would not guarantee removal of the freight within a reasonable length of time.

39. The New York, Chicago & St. Louis Railroad Company stored two carloads of coffee for one firm. The coffee was unloaded in the warehouse, receipted for by a broker, and delivered to different persons or firms upon his order. This consignment was received by the railway within about forty days prior to the hearing on September 29, 1897, and some of it was still so held at that date. The contracting agent of the road asked the local

agent whether he could arrange to take carloads of coffee in the house on account of this firm and deliver upon orders drawn by the broker. This indicates special pre-arrangement, and to some extent the method of granting the storage privilege.

40. The Lehigh Valley Railroad Company received and stored various consignments at its lake station in Buffalo:

Sugar destined to points west was held subject to billing instructions from the forwarding agent at Jersey City. Sometimes the western consignees were named in the billing, but other shipments were consigned to order of the refining company and held at Buffalo for as long as three months or more, subject to reshipping orders. The sugar was originally billed to Buffalo, and then shipped to western points as ordered, and only the through rate from Jersey City to ultimate destination was charged. The testimony indicates that "east bound sugar" is stored free for thirty days, but that such rule does not apply on west bound shipments. How much or whether any sugar is carried east bound through Buffalo does not appear. Neither is it definitely shown that sugar destined west and stored at Buffalo in transit is in fact subjected to any charge for storage or handling.

East bound flour received by this company at Buffalo is held in free storage for 20 days. Flour was so received in the fall of 1896 at the close of lake navigation, and was not entirely removed until some time in the following February. Bills for storage beyond the 20-day limit were rendered to two principal shippers, large milling companies in the Northwest, but according to the company's books at Buffalo such charges had not been paid at the time of hearing on September 29, 1897, notwithstanding the accounts had been rendered monthly to the shippers since January 1, 1897. Storage charges due from another milling company in the Northwest were paid and so shown on the books of the railway company at Buffalo. The Consolidated Milling Company occupies, apparently without charge, a portion of the railway company's lake freight station at Buffalo with a plant for repacking and resacking flour.

Copper in casks was held by this company free of storage charges and subject to reshipping or so-called diverting orders. Lead, spelter and shingles were also kept in storage by this carrier, but whether any charge was made therefor, and if so, what charges were paid, does not clearly appear.

41. The Delaware, Lackawanna & Western Railroad Company stored sugar for a refining company. Some of it was shipped directly to specified consignees and promptly removed. The remainder was subject to shipper's order and held for the first steamer, but in no case longer than 10 days. Flour was also stored free, but not for a longer period than the 20-day limit. The Pillsbury Company has a plant in one of this carrier's freight houses for repacking, resacking and rebranding flour, and it is not shown that any charge is made for such privilege. Flour shipped by this company is billed through at the New York rate, but when reconsigned at Buffalo to points in Pennsylvania, New York or New England, the through rate from the original point of shipment is changed. Storage bills against this company have been rendered by the agent of the carrier at Buffalo, and when rendered he credited his accounts with the amount. Whether they were paid or not the agent did not know. He did collect accrued storage charges from other shippers on flour, bran and middlings. The great mass of freight destined to Buffalo over this road is promptly removed by consignees, notice to remove in 24 hours being usually given. Car service rules, which include demurrage charges, are also enforced.

42. The New York Central & Hudson River Railroad Company carries lake freight in connection with steamers of the Western Transit Company. This lake line is understood to be controlled by the railroad company. Freight coming by the boats or steamers and placed in the freight house is not considered as in possession of the railroad company until delivery of the billing under which it is to be forwarded by the railroad. On the other hand, delivery of west bound freight is considered made to the lake line when the property has been unloaded from the car into the freight depot. Copper brought by the lake line was held in the freight house for about a month or more without charge. Sugar is held in the freight house until it is convenient for the lake boats to move it. Sugar carried in the lake boats serves for ballast, and the boat space is then filled up with various kinds of package freight. All freight going through this house is shipped under a through rate. Reconsignments from that depot are not the rule. No storage charges are collected on freight placed in this warehouse. The road has other freight hou
Buffalo.

43. The Erie Railroad Company stores coffee and rolled oats in its Buffalo freight house from one to ten days, making delivery in part lots upon orders from consignees. This is the only traffic so handled at that freight depot. The company has another freight station at East Buffalo, and still another called its lake station. At the East Buffalo house copper was held from 6 to 8 months or thereabouts awaiting billing instructions from the Union Transit Company, a lake line. The railway treats copper so held as in possession of the lake line until billing instructions are received.

Large consignments of flour are received by lake, consigned to shippers and forwarded upon order. The billing is on the New York rate, and when change of destination or reconsigning at Buffalo requires a different rate the corrected rate is applied. This road also allows 20 days' free storage on east bound flour. The rule is applied in this way: If 20,000 barrels of flour are received to-day they must order out so many barrels within the next 20 days. A storage bill of approximately \$500 owed by one flour company remained unpaid at the date of the Buffalo hearing. Another company had paid about \$350 for flour storage in 1897. On shipments by a West Superior firm, the storage charges at Buffalo on forwarded flour are billed as a charge on the flour following it to destination.

NEW YORK:

44. Circulars have been promulgated by the Joint Traffic Association which contain rules in regard to the storage, handling and delivery of flour and mill stuff at New York, Philadelphia, Baltimore, Lake Erie ports and other points in the territory understood to be covered by that association. These circulars provide for the free storage of flour at New York as follows: Flour shipped lighterage free, notice of arrival having been given consignee, and not ordered delivered at railroad piers or stations in New York, forty days; flour shipped to New York direct and billed "lighterage free" for delivery at railroad piers or stations, five days. The storage charge on flour stored by the railroad companies is, for each thirty days or fraction thereof beyond the period of free storage, including handling in and out, $1\frac{1}{2}$ cents per 100 lbs. On domestic flour stored at Philadelphia and Baltimore

ten days is allowed. For the next thirty days the charge for storage is 3 cents per bbl., and for each successive period of fifteen days the storage charge is 2 cents per bbl. A rule with respect to New York, Philadelphia and Baltimore is that "no contracts under through export bills of lading on flour shall be made, except based on *bona fide* ocean contracts providing for clearance from seaboard within sixty days from the date of shipment."

Shipments of flour, bran, and mill feed stored in warehouses controlled by carriers at Buffalo are allowed twenty days free storage. For each succeeding thirty days or fraction thereof the storage charge is $1\frac{1}{2}$ cents per 100 lbs.

The circulars also contain rules regulating storage and diversion of flour, bran and mill feed at Trunk Line western termini and interior points east thereof.

45. The Pennsylvania Railroad Company stored in its warehouses located on the river front large quantities of tobacco, flour, canned meats, glucose, barbed wire, pig lead and other merchandise, and held the same subject to orders of consignees or shippers free of charge, except as to flour, on which charge was made in conformity with the above mentioned rules. The gross amount received for the storage of flour, from the first of June, 1896, to the first of August, 1897, was about \$8,000. Some of the tobacco was held three or four months. Most of the canned meat is handled on through bills of lading for export. In some cases consignments have been held there for two months or more before they have been entirely removed.

46. The Central Railroad of New Jersey stored free of charge and subject to orders of shipper or consignee, at its freight dock known as pier 8, in the city of New York, carloads of nails and canned goods. In one case a shipment of nails was received in store on May 21, 1897, and delivery was not completed until September 7 following. Another shipment was received on May 22 and delivery made some time during August of that year. It is not shown how long the canned goods were held.

A statement in evidence shows all shipments of flour received and stored, with the amounts charged by the railroad company for storage beyond the limit of forty days, but whether such amounts had actually been collected was not definitely answered by the witness.

47. The Delaware, Lackawanna & Western Railroad Company, at its terminals on the Jersey City side, holds local flour from twenty to thirty and forty days, without charge. If not taken away at the expiration of that time, it is ordered to a public warehouse. Export flour is kept "as long as forty days; once in a while, in small lots, sixty days, or three months," and is held subject to order of shipper.

This road receives quantities of tobacco from the South and Southwest for export; also glucose, lard, pork, bacon and oil subject to order for delivery to various parties without storage charge.

48. The Lehigh Valley Railroad Company, during the years 1896 and 1897, stored at Jersey City large quantities of glucose in barrels consigned to various parties for export, and held the same subject to order, without charge. It also held a large number of carloads of flour for one milling firm, and delivered the freight upon orders from the New York Lighterage and Transportation Company which acted apparently under the direction of the milling company or its agent. This milling company has a plant for resacking flour at one of the railroad company's freight houses. This privilege is also extended to another company but it does not appear that either of these shipping concerns pay anything for the resacking privilege. The milling company first mentioned paid storage charges to the railway on flour held over forty days.

49. The Erie Railroad Company allowed freight to remain in the warehouse at Jersey City, in some cases for three months, and on the New York pier for thirty days or more.

Flour, bran, mill feed, hay and excelsior are subjected to storage charges and these are collected from all consignees. No storage charge is made to any consignee or receiver for any other kind of freight.

When the cars are needed or the warehouse is crowded, a final notice is sent to consignees that unless freight is removed before the time therein specified it will be placed in store at consignee's risk and expense. During the year 1897 this road sent freight to public warehouses after issuing this notice.

The rule of the Traffic Association that "no contracts under through export bills of lading on flour shall be made, except

based on *bona fide* ocean contracts, providing for clearance from the seaboard within sixty days from date of shipment," is construed by the road to mean, that export flour shall be stored sixty days without charge.

The amount collected for storage of literage flour on piers from August 1, 1896, to March 15, 1897, was \$4,190.46. At East River station, a local flour delivery, \$867.64 was collected.

The road stores quantities of fertilizer at its station, which are delivered in part-lots or billed for export upon orders from consignees. Quantities of wood alcohol, copper, tobacco and prepared oats were also received and held free of charge, subject to orders for export or delivery.

50. The West Shore Railroad stores flour at Weehawken under the Association rules. Flour for export has, in some cases, been held there ten days or two weeks for recooperage, or awaiting a steamer, but whether free or at a storage charge is not definitely stated.

Twenty-five thousand barrels of sugar for western points were received, commencing with the first week in May, and practically all of it was still held in storage at the time of the hearing, October 1-4, at a storage charge not named. Bills were rendered monthly running from the day on which the sugar was received. Condensed milk is received and held in the same manner. Some freight is sent to public warehouses every day from this company's pier in New York City.

51 The New York Central & Hudson River Railroad Company carries consignments of freight in excess of the forty-eight hour limit, for the reason that in many cases the consignees will not remove property within that period. The freight is held free of any storage charge and the same rule applies alike to small and large consignments. It was shown that large consignments of copper were received and held in this way. A refusal to grant this privilege, it was claimed, would result in a loss of the business. In respect to flour, the company is governed by the storage rules above mentioned.

Large consignments of west-bound sugar have been received and stored in cars subject to order of shipper. When traffic is congested at New York, the sugar is forwarded to Buffalo, and there held awaiting orders for shipment west.

When the soliciting agent of this road has been unable to agree that goods shall remain in storage, on account of the over-crowded condition of freight houses, the freight has been given to competing lines. This agent testified that "shippers tell us they use the railroad stations for warehouses."

PHILADELPHIA:

52. The Merchants Warehouse Company of Philadelphia operate warehouses under agreements with and on premises owned by the Pennsylvania Railroad Company, at Eighteenth and Market Streets, and Thirty-second and Market Streets; also a grain and flour storage warehouse on Beach Street, and a hay warehouse at Kensington in Philadelphia.

The lease of the warehouse on Market Street provides that the railroad company shall switch its cars to the warehouses and at the same rate for which it delivers or receives traffic at any other terminal controlled by it in the city of Philadelphia; that the railroad company shall pay $2\frac{1}{2}$ cents per barrel for each barrel delivered to the warehouse company, or received from the warehouse company at Eighteenth and Market Streets, up to 50,000 barrels per month; $2\frac{1}{2}$ cents per barrel on each barrel over that number of barrels per month; 40 cents a ton for miscellaneous merchandise other than flour; 35 cents for each ton of merchandise delivered to or received from the warehouse at Thirty-second and Market Streets. In addition to such amount to be paid by the railroad company the warehouse company may charge the consignee, shipper or owner, on any merchandise that it may store or handle, or for any service rendered or facilities furnished, reasonable and customary rates for the services performed, but the charges made to the public for services rendered by the warehouse company, shall be subject to approval by the railroad company. The warehouse company is to use all reasonable efforts to secure to the lines owned, leased, controlled and operated by the Pennsylvania Railroad Company, all traffic controlled by the warehouse company, or destined to or from the warehouse aforesaid; traffic passing over such lines shall at all times have preference in the use of facilities furnished by the warehouse company over traffic passing over other lines, and without the consent of the railroad company. Such facilities are not to be extended to traffic passing

over other lines. The lease to the warehouse company of land on Beach Street provides that the warehouse company shall erect the building at its own expense. The provisions of the agreement in other respects are substantially the same as those embodied in the one above referred to.

The lease of the hay warehouse provides that the railroad company shall pay the warehouse company 35 cents per ton for merchandise delivered by the railroad company, or received from the warehouse company. The terms of the lease are substantially the same as in the agreements already mentioned. The leases also provide that the warehouse company shall furnish all manual labor at its own cost; handle promptly and effectually all traffic delivered to it by the railroad company, and pay all running expenses of its warehouse.

The Pennsylvania Railroad Company owns about 33½ per cent of stock in the Merchants' Warehouse Company, and two of the five directors are employees of the railroad company. The warehouse company allows ten days free storage on property received from the Pennsylvania Railroad Company, but not on property received from the general public, and monthly accounts rendered to the railroad company; the major portion of the business comes from the Pennsylvania Railroad, and consignments sent to the warehouse company are forwarded there by order of shippers or consignees.

53. The Philadelphia and Reading Railway Company holds "freight other than merchandise, flour and grain products" in its station free of charge until taken away by consignees. This is not done by agreement for a specified time. The railway agent said: "When a question of that kind arises, sometimes we say we will take care of it for a little while."

A contract between the Philadelphia and Reading Company and the Pennsylvania Warehouse and Safe Deposit Company provides for ten days free storage of flour, grain products and merchandise received over the lines of the railway company. The lease provides that the warehouse company shall solicit consignments over the railway company's lines to the warehouse, by mail and personal application to local shippers and consignees; that one solicitor shall visit western shippers of flour in September and March of each year, or more frequently if suggested by

the railway company, and approved by the warehouse company, for the purpose of securing consignments over the railway to and through the warehouse; that the warehouse company shall make no other or greater charge for services rendered than are charged for similar services by warehouses upon the lines of the Pennsylvania Railroad, or the Baltimore and Ohio Railroad, in the city of Philadelphia, unless the consent of the railway company to make such higher charges shall be given in writing. The railway company maintains the necessary track connections between its main track and the warehouse, and is required to deliver for storage and warehousing all flour which it can control, and which shall have been transported over its lines, and consigned for delivery to local points in the city of Philadelphia, within certain districts; and also to so deliver all general merchandise which shall have been transported by it for delivery within such limits which the railway company may desire to place in store. The railway company constitutes and appoints the warehouse company as its agent or warehouseman for all such merchandise delivered by the railway company, but such agency extends only to the receipt, storage and delivery of consignments, and collection of charges thereon. The railway company pays the warehouse company as a terminal allowance for the facilities afforded, and the services rendered, 30 cents per ton, gross or net, according to classification, for each ton of merchandise received, handled and stored by the warehouse company, except such merchandise as shall have been shipped to or from the waters of New York Bay, or *via* New York to or from points beyond, for which the railway company pays 25 cents per ton. This Warehouse and Safe Deposit Company loans money on shipments stored in its warehouse.

54. The customary charges per ton for storing the following articles in Philadelphia are stated in testimony to be: canned goods, first month, including labor, 44½ cents, second month, 17 cents; wool, first month, including labor, 90 cents, second month, 54 cents; flour, about 66 cents the first month (storage 33 cents, labor 33 cents), second month, 33 cents.

At Pittsburg, under an agreement between roads entering that city, four days' storage is allowed without charge, after which the freight is to be sent to public storage warehouses. For some

time before this agreement became effective the carriers provided free storage. Since the agreement was made the business of the general warehouses has increased, and the storage of printing paper in such warehouses at the date of the hearing is shown.

CONCLUSIONS.

The storage of freight, diversion of cars to shippers' use, part-lot distribution and reconsigning privileges involved in this investigation are of considerable importance and value to shippers, and especially so to the class of manufacturers or dealers largely engaged in supplying those staple commodities which are in common demand throughout the country. To the extent of its value, each privilege lessens the aggregate compensation paid by shippers to carriers for transportation and terminal services. The charges made for such services, and all rules and regulations which in any wise change, affect or determine such aggregate compensation, are plainly required by the statute to be shown by the carriers upon their published rate schedules. The privileges in question do change, affect or determine the aggregate charge for the shipper and, to the extent of cost, for the carrier as well. They are also terminal facilities which are covered by the regular transportation charge or for which a special charge is imposed.

The function of the carrier is to receive, transport and deliver. As a rule, it can only be forced into the position of warehouseman through lack of diligence on the part of the consignee in the removal of his property. With no general duty to act as a warehouseman for indefinite periods in connection with its primary obligations as a common carrier, it cannot assume to provide shippers with valuable warehouse facilities which are not essential to its business as a carrier, without furnishing them for all shippers at all times and upon the same terms and notifying the public thereof in the manner provided by law. Distributing consignments in part lots to different subsequently designated persons, reshipping upon shipper's order parts of consignments held in store, suspending collection of charges for use of cars beyond specified reasonable periods of time after such cars have been placed for loading or unloading by shippers or consignees, and all kindred concessions, come within the same requirements of impartiality and publication

While the evidence taken discloses few instances where a transportation privilege has been granted to one shipper or consignee and actually denied to another, the manner of providing these exceptional facilities indicates that there must be resulting discriminations and that unlawful abuses are not merely practicable, but that their perpetration is thereby actually invited. The testimony of railway witnesses is unanimous that the granting of these privileges is forced by the stress of competition between carriers, and that demanding shippers would be unable to obtain the concessions if refusal to grant them by one carrier did not almost inevitably result in diversion of traffic to a line on which they are allowed. At some of the larger terminals the expenses incurred by competing carriers, in providing storage and the other privileges described, have assumed large proportions; and when the case was argued counsel representing several important lines denounced the practices as unnecessary and illegitimate, and expressed the hope that the Commission would find that it has power to force their suppression.

Under the practically universal custom of defendants and other carriers of notifying consignees to promptly remove transported property from freight houses or cars, and often inserting such requirement in bills of lading, and the failure of carriers to notify the public in their rate sheets that storage in houses or cars will be granted, some shippers or consignees are, through fear of additional charges, substantially forced to promptly remove their freight, while others, through prearrangement or in other ways, are better informed, and use freight houses or cars for specified or indefinite periods without charge. If charge is made for storage provided by the carrier in its own houses, or in a warehouse with which it has an arrangement or over which it exercises control, the carrier does not publish the charge nor, as a rule, the fact that storage is granted at all. The publication by eastern carriers of regulations concerning the storage of flour and mill stuff at some designated ports and interior points may constitute an exception to this statement, but whether in such publication the carriers fully comply with the law is not a question which calls for determination at this time.

The general situation is aptly described by the answer of a witness, a railway agent, who was asked why consignees should be

notified to remove freight upon arrival if the penalties stated for non-removal are not customarily enforced. The witness replied: "Why, it gives the privilege of making a charge if we feel so disposed." A carrier can exercise no such discretion in the face of provisions in the Act requiring carriers to publish their charges and to adhere to such charges when published.

Any injustice resulting from allowance and non-allowance by the carriers of the privileges and facilities involved seems clearly forbidden by section 2 of the statute, as interpreted by the United States Supreme Court in *Wight v. United States*, 167 U. S. 512, 42 L. ed. 258; and the general provision against undue preferences in the third section also applies.

Section 1 of the Act provides that "All charges for any service rendered or to be rendered in the transportation of passengers or property as aforesaid, or in connection therewith, for the receiving, delivering, storage or handling of such property shall be reasonable and just." From this it appears that storage is, within the contemplation of the Act, an incident of transportation and may be dealt with as such. By section 6 it is provided that "The schedules printed as aforesaid . . . shall also state separately the terminal charges and any rules or regulations which in any wise affect or determine any part of the aggregate of such aforesaid rates and fares and charges." From what has been already said it is apparent that the granting of storage as a part of the service covered by a particular rate may be a matter of great consequence to the shipper. The object of the sixth section is to secure to the public an opportunity of knowing the rates charged by carriers for the services rendered, but it is of no possible avail to state the amount of the rate unless the thing or things covered by that rate are also stated or known. Whenever any service is rendered or any privilege allowed beyond the ordinary receiving, transporting and delivering of the property, that should appear upon the schedule.

The complainant did not upon the trial ask that any specific order should be made for the present against particular defendants in this proceeding, but that a general order should be issued requiring all carriers to publish as a part of their schedules whatever free storage facilities were allowed. Whether a general order of that kind can be made in a proceeding of this sort we do

not determine. This investigation has covered a wide area, embracing a majority of the principal carriers subject to our jurisdiction, and from the facts developed we are convinced that carriers are very generally extending these privileges of storage to particular shippers without any mention of them upon their published tariffs. It also seems clear that in such a situation the Commission may, by a general order, require carriers to state in their tariffs what free storage is granted and the terms and conditions under which it will be granted. In *Interstate Commerce Commission v. Detroit, G. H. & M. R. Co.* 167 U. S. 633-646, 42 L. ed. 306-310, the Supreme Court said: "In a matter of this kind much should be left to the judgment of the Commission, and should it direct, by a general order, that railway companies should thereafter regard cartage when furnished free as one of the terminal charges and include it as such in their schedules, such an order might be regarded as a reasonable exercise of the Commission's powers." If this be true of cartage, which is not mentioned in the Act, it must be all the more so of storage, which is expressly mentioned.

We have concluded, therefore, not to make any order in this case as such, but from a consideration of the facts developed upon this hearing, to make a general order of the sort above indicated, and such an order will be prepared and issued. This case will be retained for the present.

IN THE MATTER OF THE APPLICATION OF THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY
and Others for a Suspension of the Fourth Section.

(No. 525.)

Decided February 24, 1898.

The Canadian Pacific Railway, operated through the Dominion of Canada, connects with lines which reach various sections of the United States, and that railway is thereby enabled to engage in the carriage of passengers between numerous points in the United States, and of passengers traveling to and from the Klondike region, in the Dominion of Canada, in competition with lines wholly within the United States and subject to the provisions of the Act to Regulate Commerce. This foreign carrier has greatly reduced passenger fares currently in effect on such traffic, including those in force from Boston and other eastern points to St. Paul, Minn., and points on the Pacific coast, and from St. Paul to Pacific coast destinations, without the concurrence of its connecting American lines; and it makes such reduced rates effective by including therein the separately established rates of such connecting lines. The competing American lines must either meet the reduced rates of such foreign carrier, or lose their share of the traffic; and they cannot make such reduced rates apply at intermediate points without suffering large loss of necessary revenue. *Held*, That the petitioning American carriers should be relieved temporarily from the operation of the fourth section so that they may meet the competitive passenger rates of the Canadian Pacific Railway Company, without making such rates effective on passenger traffic to or from intermediate points on their respective lines.

William A. Day for petitioners.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, Commissioner :

The Canadian Pacific Railway extends from Halifax, upon the Atlantic seacoast, to Vancouver, upon the Pacific. Its lines reach to Detroit, Mich., and connect with various American lines at Hamilton, Ontario; Prescott, Ontario; and at various junction points east of Prescott. The Minneapolis, St. Paul & Sault Ste. Marie Railway extends from Sault Ste. Marie, Mich., westerly to

St. Paul and Minneapolis, and from thence in a northwesterly direction to Portal, N. D., where it connects with the Canadian Pacific Railway. The Duluth, South Shore & Atlantic Railway extends from Sault Ste. Marie, Mich., along the southern shore of Lake Superior to Duluth, Minn., and some distance beyond. These last two lines are operated under the control of the Canadian Pacific Railway Company, though by what arrangement does not clearly appear.

It will be seen, therefore, that the Canadian Pacific and its allied lines form possible routes between the eastern portion of the United States and St. Paul and vicinity; between the eastern portion of the United States and the Pacific coast; and between St. Paul and vicinity and the Pacific coast. For the purpose of explaining the present situation, Boston may stand as the representative of the eastern section, St. Paul as that of the middle section, and the Pacific coast as the western terminus.

Previous to February 19, 1898, the first-class rate from Boston to St. Paul *via* the Canadian Pacific had been for some time \$29.50; from Boston to the Pacific coast, \$79.25; and from St. Paul to the Pacific coast, \$60. By tariffs made effective February 19 and 21, the Canadian Pacific and its lines put in effect the following first-class rates: Boston to St. Paul, \$18; Boston to the Pacific coast, \$40; St. Paul to the Pacific coast, \$25. The second-class rate from Boston to the Pacific coast established by this last tariff is \$30, and from St. Paul to the Pacific coast \$20. The rate from Boston to the Pacific coast, which is the one demanding especial attention, is made applicable by the tariff in question to substantially all New England, the entire State of New York, the northern and eastern part of Pennsylvania, including the city of Philadelphia, and the northern half of New Jersey. The tariff also extends to many points outside this territory, but the fare from these points is somewhat higher. Thus, the rate from Baltimore, Md., *via* New York, is \$45.30, and the rate from Washington, D. C., *via* New York, \$46.55.

The petitioners who represent the various American lines which compete with the Canadian Pacific for this business ask a suspension of the fourth section for the purpose of meeting the above rates, or any other rates of the same kind which may be

made by the Canadian Pacific. The ground upon which they base their petition is that if, under the fourth section, they are compelled to apply the long-distance rates to intermediate points as maxima, it will effect a demoralization of all intermediate rates and will materially reduce their revenues derived for intermediate business, although the rates at present charged upon that business are just and reasonable.

The testimony before us tended to show that conservative estimates fixed the amount of traffic which would pass over the various competing lines to points upon Puget Sound and vicinity at from 100,000 to 200,000 passengers during the current year, of which the American lines, if maintaining equal rates with the Canadian Pacific, might expect a large percentage, but of which, if the present rates were continued, they must lose practically the whole. The general passenger agent of the Northern Pacific presented to us the case of the transcontinental American lines, and he was able to give us specific information only in reference to his own road. His statement was that the intermediate business of the Northern Pacific contributed about 80 per cent to the passenger revenues of that company, and that to meet the present rates of the Canadian Pacific to Pacific coast points would necessitate a diminution of revenue from that intermediate business of from 30 to 50 per cent.

Manifestly these low rates have not been established by the Canadian Pacific as a permanent tariff, but to serve a temporary purpose. This sufficiently appears from the fact that they are just about one half the previous rates, and just about one half what, on the basis of ordinary railway rates in this country, would be a fair compensation for the service rendered. This is still more evident from the fact that the Canadian Pacific stands the entire shrinkage. The testimony before us was that no American road joined with the Canadian Pacific in making these rates. That is to say, that company is obliged to pay the full local fare from the point in the United States where the passenger begins his journey to its own line, and in some instances another local from the Pacific terminus of its road to the point of destination. Take as an illustration, a passenger ticket from Philadelphia to Seattle. The rate second class, by which most of this traffic goes, is \$30. The nearest point, apparently, at which the lines of the

Canadian Pacific can be reached from Philadelphia is Hamilton, Ont., and the fare from Philadelphia to Hamilton, limited, is \$10.65. This leaves the Canadian Pacific \$19.35 for transporting the passenger over its lines from Hamilton to Seattle, a distance of about 3,000 miles, and out of this must apparently be taken another local from Mission Junction to Seattle, a distance of about 150 miles.

While this hearing was in progress the Canadian Pacific announced by telegraph a rate of \$30 second class from San Francisco to Victoria by boat, and thence by rail to eastern territory, and it was said that the boat fare from San Francisco to Victoria was \$8.00, thus leaving \$11.35 for the 3,000-mile rail transportation of the Philadelphia passenger. This would be an extreme case, but it shows that the condition presented is not one of legitimate competition, but of warfare.

An examination into the causes of the present condition leads to the same conclusion. In 1887, when the Canadian Pacific was first opened for Pacific coast business, and first became a possible route between the eastern part of the United States and the Pacific coast, that line demanded a differential to Pacific-coast points and such a differential was allowed by its competitors. The testimony before us showed that this differential was \$7.50 first class and something less second class. The tariffs on file with the Commission indicate that the differential was less, but it is certain that some differential was conceded the Canadian Pacific upon all business originating in the territory to which that company has applied the present \$40-rate to Pacific-coast points. That is, a passenger could buy his ticket from any point in that territory to Seattle by the Canadian Pacific for \$7.50 less than he could buy it by an American line.

When this differential was originally conceded, the Pacific coast passenger business to Puget Sound and vicinity was almost entirely confined to points in the United States south of Vancouver, and this has continued to be so in the main until recently. But within the last twelve months or thereabouts, mining operations in the Klondike have drawn to that region a great amount of travel, the larger part of which goes through these Pacific coast ports, with the result that while heretofore the bulk of this passenger traffic has gone to points south of Vancouver, the bulk of it now goes to points north.

The American lines insist that whatever may be said as to the differential to points south of Vancouver there is absolutely no reason for one to points north. This differential was allowed the Canadian Pacific to the points south to compensate that line for certain real or alleged disadvantages under which it labored as to those points, but with reference to northern points certainly the Canadian Pacific is under no disadvantage. Plainly, therefore, it is entitled to no differential on this Klondike business. But to continue the differential to Seattle and other points through which this traffic passes is in effect to apply it to all such traffic. Hence, in order to compete fairly for this new business, the American lines contend that the former differential shall be abolished.

It was evident from the testimony that this controversy had led to more or less departure from the published rate by all the competing lines, and this demoralization may very likely have induced the Canadian Pacific to take action at this time, but the underlying difficulty seems to be the differential.

It is manifest, upon the foregoing statement of facts, that the American lines are entitled to and ought to insist upon a portion of this transcontinental business, and that in order to obtain any portion of it they must meet the rates which have been made by the Canadian Pacific. To refuse to meet those rates would permanently divert the traffic from their lines, and would be an act of injustice to the stockholders whom they represent. It seems unfortunate that there is no way by which a difficulty of this kind can be adjusted without resort to a rate war of the proportions which this is likely to assume, but apparently there is no other method.

Now, the American roads insist that the Interstate Commerce Act places them under serious disadvantage in this conflict which the Canadian road has forced upon them, and that they are entitled to be exempted from those disadvantages in so far as this Commission can grant such exemption. In this we think they are right. No opinion is expressed as to the merits of the controversy. But one party has been represented in the hearing before us. If we could intelligently decide that question, its decision would be profitless. The condition actually exists. The rate has been actually made by the Canadian road, and must be

met by the American roads, and we think if the American lines rest under any disadvantage by virtue of the Act to Regulate Commerce, that disadvantage should be removed in so far as this Commission has power to remove it, provided that can be done without injury to the public.

The petitioners insist, in the first place, that the fourth section, which requires that no higher rate shall be made to intermediate than to the more distant points, operates against them since the Canadian road is subject to no such limitation. While it is perhaps true that there is no legal inhibition which would prevent the Canadian Pacific from charging a higher rate to certain intermediate points, it appears from an examination of the schedules on file, and from a communication from that company in answer to an inquiry made by the Commission, that the tariffs now in effect do not in fact make a higher rate to any intermediate station. While the Canadian road is under no legal obligation to obey the rule of our fourth section, it does in actual fact do so. The American lines reply that the Canadian road has not a corresponding amount of intermediate traffic to protect, and that therefore the observance of the fourth section is a much more serious matter to them than to their foreign competitor. What force there may be in this suggestion we have not thought necessary to consider. Evidently the fact might be as stated.

However it may be as to the long and short haul, the Canadian Pacific does violate the provisions of the Act to Regulate Commerce in one most important respect, and without that violation of our law it would be impossible for that company to effectively continue this contest. The Commission held in *New York, N. H. & H. R. Co. v. Platt*, 7 I. C. C. Rep. 323, that the New England road had no right to publish a tariff to a local station upon the New Haven road, and absorb the local rate to that station without the consent of the New Haven Company. That is, a carrier cannot make a joint tariff over its own line and the line of some other company without the consent of the latter company.

In the present case that is exactly what the Canadian Pacific is doing in almost every instance. It has no joint arrangement with any American line. It simply pays the local fare over that line to its own iron, and absorbs that as a part of the through rate

The rate from Philadelphia and the rate from Hamilton are the same. The Canadian Pacific Company purchases a ticket in Philadelphia from Philadelphia to Hamilton, and it sells, in Philadelphia, for \$40, that ticket and its own ticket from Hamilton to Seattle. It sells the resident of Hamilton its own ticket from Hamilton to Seattle for \$40. In other words, it carries the Philadelphia passenger from Hamilton for \$10.65 less than it carries the Hamilton passenger from the same point. Stated in another form, it pays the Philadelphia passenger \$10.65 to purchase a ticket from Hamilton by its line. It in effect grants a rebate to every passenger paying a local fare to its line.

Now, if the Canadian Pacific were subject to the Act to Regulate Commerce, it could not do this. It must carry all persons from Hamilton at the same tariff. It might perhaps make a joint arrangement with some connecting line by which the fare from Philadelphia through Hamilton would be no more than the fare from Hamilton, and it might, as a part of this arrangement, accept such a division that the road from Philadelphia to Hamilton would receive its full local fare; but in that case there would be an established line from the point of origin to the point of destination, subject in all respects to the provisions of the Act to Regulate Commerce. It is difficult to see how, under the present practice, the Canadian Pacific is in any way subject to that act, or why it may not vary the rate in Canada at will.

It will be readily seen that it is by virtue of this practice that the Canadian Pacific secures this business, and that without it practically none of the business could be secured. It is also evident that there is no limit to which it may not extend. There is no part of the United States from which the Canadian Pacific may not purchase traffic in this way. It might pay even more as a local fare to its line than the total fare. As was suggested in the New Haven case above referred to, such a practice demoralizes all rates and is utterly at variance with legitimate competition.

In view of this situation,—in view of the fact that this contest is being conducted by the Canadian road in violation of the Act to Regulate Commerce, under which the American lines must operate, and is illegitimate upon general principles, we think that we should remove as far as possible the disadvantages under which the American lines rest by virtue of that law, provided the public is not thereby injured.

The rates to intermediate points have been in effect at substantially their present figure for some time, and, so far as known, no special complaint as to their reasonableness exists. There is no obvious hardship or injustice to these points in permitting our lines to meet this foreign competition by making the lower charge to the more distant point for the time being. Such an arrangement, if permanent, might be unjust and would almost certainly lead to discriminations at the intermediate points. But this order is a temporary measure to meet a temporary emergency, is subject to be revoked at any moment, and will be revoked whenever the public interest requires it.

This conclusion is prompted by no feeling of hostility to the Canadian Pacific Railway. That line has been and is of great benefit to certain sections of the United States. Neither do we overlook the fact that the only protection which the public has against excessive rates is that very competition of which the present unfortunate condition seems to be a necessary phase. If the Canadian Pacific made these rates with the concurrence of its American connections, observing, as it apparently now does, the rule of the fourth section, an entirely different question would be presented.

Ordinarily in making an order of this kind the points between which the lower rate for the longer distance may be charged are specified. In this case that is impossible, since the Canadian Pacific, under the peculiar method which it adopts, may go to any point in the United States.

The only feasible way seems to be to allow the American lines to meet this competition wherever it exists. In no case are they allowed to make a lower rate than has been previously made by the Canadian line. Every tariff must be filed with the Commission before it takes effect, and a careful observation of what is done under the order must be relied upon to prevent abuses.

A relieving order will be entered in accordance with the views above expressed.

SAVANNAH BUREAU OF FREIGHT & TRANSPORTATION, JOHN W. HUGER, ARMIN B. PALMER and ALBERT L. STOKES,

v.

**CHARLESTON & SAVANNAH RAILWAY COMPANY;
SAVANNAH, FLORIDA & WESTERN RAILWAY COMPANY;
NORTHEASTERN RAILROAD COMPANY OF SOUTH CAROLINA;
ASHLEY RIVER RAILROAD COMPANY.**

Decided March 24, 1898.

Passenger fares on the C. & S. Ry. between Savannah, Ga., and points in South Carolina, exceed the combined State rates now in force, but most of them, including the fare between Savannah and Charleston, are less than the sum of State rates in effect prior to the South Carolina statute of March 9, 1896, which limits passenger fares in that State to $3\frac{1}{2}$ cents per mile, unless otherwise provided by the State Railroad Commission, and abrogates a special rate of 4 cents a mile provided for this railway in an act of 1884. The interstate fare between Savannah and Charleston is equal to 3.826 cents per mile. Round-trip tickets between Savannah and Charleston, limited to ten days, are sold by the railway for \$7.00, or about 3 cents a mile. The conditions governing local passenger traffic in South Carolina on the C. & S. Ry. and those applying on the interstate passenger service of that railway between Savannah and Charleston, are substantially dissimilar:

Held, That the Federal statute contains no provision under which the interstate fares must necessarily be reduced because the South Carolina mileage rate was lowered by the State act of March 9, 1896, or be varied according to a different mileage rate which may be fixed by the State Commission. *He'd. further*, That the interstate fares of the C. & S. Ry. between Savannah, Ga., and points in South Carolina, are not unlawful upon the evidence in this case.

Mr. W. W. Gordon, for complainants.

Mr. Edward Baxter and Messrs. Erwin, Du Bignon & Chisholm, for defendants.

REPORT AND OPINION OF THE COMMISSION.

KNAPP, *Chairman* :

The complaint in this case alleges that passenger fares charged by the defendant, the Charleston & Savannah Railway Company, in both directions between Savannah, Ga., and its various stations in South Carolina, including Charleston, are unlawful under sections one, two, three and four of the Act to Regulate Commerce. The general ground of complaint is that this carrier exacts more for such interstate passenger service than the sum of mileage charges permitted by the States of South Carolina and Georgia. For example, complainants state that the first-class fare of \$4.40 for the 115 miles between Charleston and Savannah amounts to 3.826 cents per mile, while the statutes of South Carolina restrict the Charleston & Savannah Railway to first-class fares within that state not exceeding 3.25 cents per mile, and within the State of Georgia the maximum charge allowed to that company is but 3 cents per mile; and that the aggregate fare now charged between Charleston and Savannah is 71 cents in excess of the mileage rates fixed by the two States. Like higher charges between other stations in South Carolina and Savannah, Ga., are also set forth in the complaint.

The other defendants are stated in the complaint to own certain small parts of the line of road over which the Charleston & Savannah Railway Company operates between Savannah and Charleston, and this is admitted in defendants' joint answer. Upon the pleadings, the Charleston & Savannah Railway Company controls and operates the entire line, and is solely responsible for the rates complained of.

This company admits in its answer that the facts are as stated in the complaint, but denies that its rates between Savannah and points in South Carolina are unjust or unreasonable, or otherwise in violation of the Act to Regulate Commerce. It avers, also, that the line from Charleston to Savannah runs through a succession of swamps, crosses three or four rivers within a distance of 100 miles, and penetrates a section of country which for the most part is uninhabitable; that the population consists almost entirely of negroes who work on rice plantations and in phosphate mines; that there is no village of any importance between the

cities of Charleston and Savannah; that the swamps and rivers made the road expensive to construct and render it costly to operate and keep in repair; that in consequence of the physical condition and malarial character of the section, its local business, whether freight or passenger, is inconsiderable; that its local passenger traffic has come almost exclusively from the phosphate mines which were operated along its line, but which within the past three years have mainly closed down in consequence of low prices, and the laborers in which have been dispersed; that, recognizing the peculiar condition of its road, the legislature of South Carolina passed an act some years ago allowing it to charge a passenger rate of 4 cents per mile, which was $\frac{1}{2}$ cent more than was allowed to be charged by other roads in that State, and even with that rate it was barely able to pay its expenses and fixed charges; that its road is part of a through line from New York to Florida, over which the service demanded by the public is of very high character; that expensive vestibule trains have to be run at a rate of 40 or 50 miles an hour, and the cost of operating such a road greatly exceeds that of a road with business entirely local, while the returns therefrom are much less than from local business.

At the hearing, complainants relied upon the admitted fact that the interstate rates in question are greater than the sum of local charges permitted by each State, and introduced no testimony. Some testimony was taken on behalf of the defense, and at the conclusion of the hearing counsel on both sides submitted the case without brief or oral argument. The sole question, therefore, is whether the local interstate passenger rates of the Charleston & Savannah Railway are unlawful because they are greater in amount than the sum of rates allowed by Georgia and South Carolina for travel over parts of the line lying in those States, respectively.

FACTS.

1. The Charleston & Savannah Railway Company is included in the "Plant System," which controls about 1,900 miles of railway, a number of ocean steamship lines, and some river steamboats, mostly operated through South Carolina, Georgia, Alabama, and Florida, and the railway named is part of long through rail, and rail and water, routes to and from New York, Boston

and other important cities. The Charleston & Savannah Railway Company itself controls the line of about 115 miles between Charleston and Savannah. Only about 17 miles of this line is in Georgia.

Prior to September 1, 1896, the first-class passenger fare over the Charleston & Savannah Railway between Savannah and Charleston, a distance of 115 miles, was \$4.60, or 4 cents per mile. On that date this rate or fare was reduced by the company to \$4.40, or 3.826 cents per mile. It is alleged in the complaint, and not denied by the carrier, that such reduction was brought about at the suggestion or request of the Georgia Railroad Commission.

Prior to May 1, 1896, the Charleston & Savannah had in force for passenger travel over its line within the State of South Carolina rates equal to 4 cents per mile. On March 9, 1896, the legislature of that State passed an act fixing passenger rates for all roads within the State at not more than $3\frac{1}{4}$ cents per mile first class, and $2\frac{3}{4}$ cents per mile second class, except when otherwise provided by the Railroad Commission. The Charleston & Savannah Railway Company thereafter applied to the South Carolina Railroad Commission to relieve it from the operation of said act, and permit it to continue charging its former State rate of 4 cents per mile. There was a hearing upon the application, and the railway company was notified to put the $3\frac{1}{4}$ cent rate in force, subject to further showing by the company and final determination of that Commission. The company put the $3\frac{1}{4}$ cent rate in effect on May 1, 1896, and it has not since been modified by the South Carolina Commission. In 1884 an act was passed by the legislature of South Carolina fixing the following passenger rates within that State: On roads with passenger earnings exceeding \$1,800 per mile, not to exceed 3 cents per mile; on roads with passenger earnings over \$1,000, and not exceeding \$1,800 per mile, not to exceed $3\frac{1}{2}$ cents per mile; on roads with passenger earnings over \$500, but not more than \$1,000 per mile, not to exceed 4 cents per mile; on roads with passenger earnings not exceeding \$500 per mile, not to exceed $4\frac{1}{2}$ cents per mile. Such rates applied to first-class passengers, and lower maximum rates were fixed for second-class accommodations. The act also provided that "nothing herein contained shall be construed to pre-

vent the Charleston & Savannah Railway Company from charging 4 cents per mile for first-class passengers and 3 cents per mile for second-class passengers." The mileage rate fixed by the Georgia Railroad Commission for first-class passenger travel on this railway in Georgia is 3 cents per mile.

The rate of \$4.40 on first-class passengers, which was put in force September 1, 1896, and is still in effect, is about 3 cents less than the combination of maximum charges allowed in the two States prior to the South Carolina act of March 9, 1896. That rate is 71 cents higher than the sum of rates chargeable under the laws of those States since the act of March 9, 1896. Round-trip tickets, limited to ten days, are sold by the defendant between Savannah and Charleston for \$7.00. This sum practically equals 3 cents per mile. The fares on this road between Savannah and most points in South Carolina, besides Charleston, are also slightly less than the sum of State rates in effect previous to March 9, 1896. On November 27, 1896, the defendant company discontinued the sale of second-class tickets between points in South Carolina and points in Georgia.

2. The through passenger service over the Charleston & Savannah and connecting railways, composing a through line between northern cities and Florida or Cuba, includes two trains daily each way, and an additional train is run for a period of about three months in each year to further accommodate winter tourists to and from Florida resorts. These trains contain coaches of modern design, and are stated to run at a speed of 40 miles an hour and upwards. This through service is maintained at large expense in competition with other through lines between the north and south. The local service is rendered by one daily train each way between Savannah and Charleston, one train to a connection with the Port Royal & Augusta Railway, and still another between Charleston and some local stations in South Carolina. The schedule time of the four regular through trains, two each way, is between 3 and $3\frac{1}{2}$ hours for the 115 miles between the two cities. The time of the local train each way between Charleston and Savannah is about 5 hours. One of the through trains south bound, leaving Charleston about 10:15 P. M. (central time), stops only at Ashley Junction and Yemassee before reaching Savannah. The other south-bound through train

leaves Charleston in the early morning, and makes four stops on the way to Savannah. The north-bound through trains stop at about the same stations. The local passenger tariff of this railway names twenty-six stations between Savannah and Charleston.

From the local passenger tariff and distance table in effect on the Charleston & Savannah Railway on and after September 1, 1896, it appears that interstate passenger fares between Savannah and South Carolina points commence with 3 cents per mile to or from Sand Island, S. C., 20 miles from Savannah, and with slight variations increase with distance up to a mileage rate of 3.86 cents to Fetteressa, 105 miles from Savannah and 10 miles from Charleston. The mileage rate between Savannah and Charleston, as stated above, is 3.826 cents. While in freight service the general rule is that the rate per ton per mile should decrease as distance increases, in passenger service a single mileage rate for all distances is often found to prevail. It is unusual to find either freight or passenger rates per mile increase with distance. But Savannah and Charleston compete for trade in this section of South Carolina, and if the higher mileage rate between Savannah and Charleston or Fetteressa is reasonable and just, the lower mileage rates for shorter distances between Savannah and other South Carolina points, including Sand Island, are a concession to Savannah, because corresponding more closely with the mileage rates to which the railway company is limited in fixing passenger charges between the same points and Charleston. There is possible water competition for passenger traffic between Savannah and Charleston, but it is not shown that such competition affects or is likely to affect the amount of travel by railroad under the rail rates now in force.

3. This railway between Savannah and Charleston runs mostly through swamp lands and crosses a number of rivers. From Savannah it runs parallel with the Savannah River, crossing it to the South Carolina side; the other streams crossed are the Coosawhatchie, the Salkehatchie, the Ashepo and the Edisto. Five or more drawbridges are operated. The road had eight miles of trestling, but, by filling in, the trestle mileage has been reduced to four. On account of the swamps and rivers, the construction of the road involved more than ordinary cost, and unusual expense is required to maintain it in a good state of repair. The section

traversed by the line is unhealthy, much of it is uninhabitable, and the population is made up almost entirely of colored persons. They have little patches of land, and some are employed in rice cultivation. Up to about three years ago phosphate mines in that region were worked extensively, but that industry has been abandoned to a considerable extent, because, it is suggested, of the discovery of phosphate rock in Tennessee, Florida, and other localities. There is one fertilizer factory located on the line, about 35 or 40 miles south of Charleston. There are no places of importance between the termini of this road, and the counties in South Carolina penetrated by the line (not including Charleston County) number 28 persons to the square mile as against 34½ to the square mile throughout the whole State. After leaving Chatham County, which includes Savannah, the road passes through Effingham County, Ga., which has about 13 persons to the square mile.

For the year ending June 30, 1897, the total freight tonnage of the Charleston & Savannah Railway was 455,719 tons, of which 127,988 tons originated on the line, and more than half of the freight so originating consisted of phosphate rock. The shipments of phosphate mined along the road were somewhat greater during the preceding year, amounting to 70,323 tons, but in 1895 the phosphate so mined and shipped amounted to only 43,068 tons. On the other hand, during that year 37,245 tons of fertilizer were so shipped, while in 1896 the volume of fertilizer traffic originating on the road had decreased to 18,639 tons, and in 1897 to 17,297 tons.

4. For the calendar years 1892 to 1896 inclusive the gross earnings of the road were: 1892, \$596,527.51; 1893, \$631,971.56; 1894, \$611,977.39; 1895, \$516,683.51; 1896, \$549,428.74. The total freight and passenger earnings of the road for those years were:

1892	-	-	-	Freight, \$264,639	Passenger, \$258,482
1893	-	-	-	" 298,851	" 239,036
1894	-	-	-	" 311,640	" 209,030
1895	-	-	-	" 245,243	" 184,117
1896	-	-	-	" 279,820	" 184,845
Fiscal year June 30,					
1897	-	-	-	" 308,978	" 176,308

Other earnings were those derived from carrying mail and express and "miscellaneous." Freight earnings increased up to 1895, in which year there was great loss, and also increased materially in 1896, and in the year ending June 30, 1897, over those for the corresponding year preceding; but passenger earnings decreased each year up to 1896, and also decreased again during the year ending June 30, 1897.

The through passenger earnings for 1896 were \$101,506.42, and the local passenger revenue (including service between Charleston and Savannah) amounted to \$83,339.44. For that year, local passenger traffic between Savannah and Charleston paid \$34,068.32, and local passenger traffic (exclusive of business between Savannah and Charleston) yielded \$49,271.12. How much of the latter earnings were derived from interstate travel between Georgia and South Carolina points does not appear. The revenue from local passenger traffic carried only between Savannah and Charleston was \$34,068.32 for 1896; \$36,111.74 for 1895; and \$40,353.39 for 1894, indicating a decrease in travel between the two cities. The remaining local passenger traffic brought in \$49,271.12 in 1896; \$44,645.66 in 1895; and \$51,550.47 in 1894.

For the calendar year 1896, there were 52,215 through passengers carried, affording revenue per passenger of \$1.944. It was testified that the Charleston & Savannah obtains from this through passenger service $2\frac{1}{4}$ cents per mile. The local passenger business for 1896 consisted of 125,488 passengers, and the average receipts were about 66.41 cents per passenger. This includes, as above stated, the passengers carried locally over the whole length of the road between Charleston and Savannah. The average revenue from all passengers was about \$1.04. For the year ending June 30, 1896, the average receipts per passenger per mile were 2.318 cents, and the average revenue per passenger was \$1.0665.

5. The earnings after paying operating expenses were, for years ending June 30, in 1895, \$112,482.69; in 1896, \$107,195.92; in 1897, \$155,191.88. The percentage of operating expenses to earnings for those years was 79.61 per cent in 1895; 79.30 per cent in 1896; and 71.98 per cent in 1897. Such percentage of expenses to gross income from operation for all the roads in the United States was 67.48 per cent in 1895 and 67.20 in 1896. For railways in group IV. (Statistics of Railways) including the

Charleston & Savannah Ry., the operating expenses were 69.50 per cent of earnings in 1895, and 68.49 per cent in 1896.

6. The Charleston & Savannah enters Charleston upon, and uses about 7 miles of, the tracks of the Northeastern R. R. Co. of South Carolina, for which it pays a monthly rental of about \$1,000. It also uses 4 miles of the Ashley River R. R. Co., for which it pays about \$1,100 per month, and from Central Junction near Savannah it runs over the Savannah, Florida & Western rails, but what is paid for using this piece of track is not disclosed.

7. The Charleston & Savannah Railway Co. has a funded debt of \$1,477,000 first-mortgage bonds, and \$2,000,000 of income bonds, a total of \$3,447,000. The capital stock is \$500,000. The capitalization per mile of line owned is \$38,763. The company pays 7 per cent interest on the first-mortgage bonds. This interest cost was paid during 1895, 1896 and 1897, the only annual reports examined, but no dividends were declared during those years. The reports do not show any return to the holders of the income bonds. After paying taxes, current liabilities and interest on the first mortgage there was a deficit in 1895 of \$42,261.13, which diminished the surplus fund to \$25,031.09. In 1896, there was also a deficit reducing the surplus to \$16,056.52; but for the fiscal year 1897 the road had \$38,913.76 remaining after making such payments, thus increasing the surplus to \$54,970.28. The Charleston & Savannah, now controlled by and operated as part of the "Plant System," was sold at auction in 1880 to H. B. Plant, acting for the bondholders, and was reorganized under an agreement by which the issue of \$1,500,000 of mortgage bonds, \$2,000,000 of income bonds and \$500,000 of stock was authorized. The proceeds of the mortgage bonds were applied to re-building, re-equipping and improving the property. \$115,800 of the stock were also used in reconstruction. The balance of the stock, \$384,200, belongs to holders of the first and second preferred income bonds. The road is now well equipped and in good physical condition.

CONCLUSIONS.

Usually the charge for a single transportation service from one place to another should not exceed the lowest combination of rates established for consecutive services covering the whole dis-

tance between the two places. The complainants assumed at the hearing that upon rates alleged in the petition and admitted in the answer the burden of proof was upon the defendant; but they refrained from offering any testimony to rebut the apparently strong showing made in favor of the carrier, and seem, in submitting their case without proof or argument, to go further and consider the rule as applying conclusively in this case. The question for determination is: Do the combined State rates, covering this carrier's entire mileage, necessarily limit the amount of the interstate charge for such distance; and, if not, has the defendant failed to justify the higher interstate fares complained of in this proceeding?

The findings show that for about twelve years prior to the South Carolina act of March 9, 1896, this railway company was entitled to charge as much as 4 cents a mile for carrying passengers in South Carolina, and that it was applying this rate of 4 cents over the whole distance between Charleston and Savannah when that act was passed; that it subsequently reduced such mileage rate of 4 cents, aggregating \$4.60 between Savannah and Charleston, to 3.826 cents per mile, or \$4.40 for the whole distance; that such reduced through fare between its termini is about 3 cents less than the sum of the maximum State rates in force on and prior to March 9, 1896; that passengers between Savannah and Charleston, starting at either city, may ride on a round-trip ticket which is sold for \$7.00, equal to about 3 cents a mile, and that such mileage rate is less than the present South Carolina mileage rate of $3\frac{1}{4}$ cents and as low as the charge per mile allowed in Georgia. These facts indicate that if the South Carolina act of March 9, 1896, had not been passed, the Charleston & Savannah Railway Company would not now be charging State passenger rates in South Carolina and Georgia, which, when combined, amount to less than its established interstate fare between the two cities. It also appears that this act of March 9, 1896, applies to all roads in the State, unless otherwise provided by the Railroad Commission of South Carolina, and that at the time of the hearing an application of the Charleston & Savannah Railway Company for leave to charge its old rate of 4 cents a mile had not been finally determined by the South Carolina Commission.

The maximum passenger rates fixed by South Carolina and Georgia for this carrier are presumptively just and reasonable, and without justifying circumstances the through passenger fare should not exceed the sum of such State rates laid consecutively over the interstate distance. It may even be conceded that a combination of the carrier's long-established rate of 4 cents a mile in South Carolina and its rate of 3 cents a mile in Georgia would have been ample compensation for the interstate service when a mileage rate of 4 cents was charged over the whole distance. That would be deciding a question of fact; but that its compensation must, under any general or specific requirement in the Federal statute, be reduced because under the South Carolina act of March 9, 1896, the South Carolina mileage rate is lowered to $3\frac{1}{2}$ cents, and consequently that, if the Commission of that State should, as it may, restore the old 4-cent basis, the interstate rate may accordingly be raised, is a proposition which we cannot indorse.

Now it seems that the interstate passenger service between Savannah and Charleston is part of long through hauls to and from northern cities; that the section of country lying between the two cities is particularly barren, unhealthy and sparsely settled; that the Savannah-Charleston fare was somewhat reduced shortly before the complaint was filed; that the passenger receipts of the road have been decreasing since 1892, while freight earnings have increased during the past three years; and that the road is more than ordinarily expensive to operate and maintain. These and other facts set forth in the findings indicate substantial dissimilarity between the conditions governing this carrier's local passenger traffic in South Carolina and those applying on its interstate passenger service between the two cities, and that there is no present cause for holding that the passenger charges of this carrier between Savannah and points in South Carolina are unreasonable or otherwise unlawful.

In conclusion, it should be observed that the record contains no indication of injury to residents of Savannah on account of the rates in question, or that merchants in that city are in any way unduly prejudiced by such rates in their competition with dealers in Charleston for trade in the section served by this railway. The complaint will therefore be dismissed.

NEW YORK PRODUCE EXCHANGE

2.

BALTIMORE & OHIO RAILROAD COMPANY; THE BALTIMORE & OHIO SOUTHWESTERN RAILWAY COMPANY; THE PITTSBURG & WESTERN RAILWAY COMPANY; THE CHESAPEAKE & OHIO RAILWAY COMPANY; THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE NEW YORK, LAKE ERIE & WESTERN RAILROAD COMPANY; THE CHICAGO & ERIE RAILROAD COMPANY; THE GRAND TRUNK RAILWAY COMPANY OF CANADA; THE CHICAGO & GRAND TRUNK RAILWAY COMPANY; THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY; THE LEHIGH VALLEY RAILROAD COMPANY; THE ALLEGHENY VALLEY RAILWAY COMPANY; THE PENNSYLVANIA RAILROAD COMPANY; THE PHILADELPHIA, WILMINGTON & BALTIMORE RAILROAD COMPANY; THE PENNSYLVANIA COMPANY; THE NORTHERN CENTRAL RAILWAY COMPANY; THE PITTSBURG, FORT WAYNE & CHICAGO RAILWAY COMPANY; THE PITTSBURG, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY; THE TERRE HAUTE & INDIANAPOLIS RAILROAD COMPANY; THE NEW YORK CENTRAL & HUDSON RIVER RAILROAD COMPANY; THE LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY; THE MICHIGAN CENTRAL RAILROAD COMPANY; THE PITTSBURG & LAKE ERIE RAILROAD COMPANY; THE WEST SHORE RAILROAD COMPANY; THE TOLEDO, PEORIA & WESTERN RAILWAY COMPANY; THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY; THE WABASH RAILROAD COMPANY; THE NEW YORK, ONTARIO & WESTERN RAILROAD COMPANY; THE PHILADELPHIA & READING RAILROAD COMPANY; THE CENTRAL RAILROAD COMPANY OF NEW JERSEY; THE BOSTON & ALBANY RAILROAD COMPANY; THE ERIE RAILROAD COMPANY; THE DETROIT, GRAND HAVEN & MILWAUKEE RAILWAY COMPANY; THE GRAND RAPIDS & INDIANA RAILROAD COMPANY; JOHN K. COWAN and OSCAR G. MURRAY, as Receivers of the Baltimore & Ohio Railroad Company; THOMAS M. KING, as Receiver of the Pittsburg & Western Railway Company; and JOSEPH S.

HARRIS, EDWARD M. PAXSON and JOHN LOWBER WELSH,
as Receivers of the Philadelphia & Reading Railroad Com-
pany.

Decided April 30, 1898.

1. Railway companies may make whatever rates, form whatever lines, and establish whatever differentials they deem best for the purpose of securing and conducting transportation, provided the just interests of the public are not sacrificed thereby, and whether in so doing they act wisely or unwisely, fairly or unfairly between themselves, is not for the Commission to determine; the jurisdiction of the Commission is confined to inquiring whether the situation which the carriers have created is in violation of the Act to Regulate Commerce.
2. Railway companies are not prohibited by section three of the Act from preferring one locality over another unless the preference is undue or unreasonable, but a preference which is without legitimate excuse is, in and of itself, undue and unreasonable.
3. Under decisions of the United States Supreme Court,—Import Rate Case, *Interstate Commerce Commission v. Texas & P. R. Co.* 163 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, and the Troy Case, *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 43 L. ed. 414,—railway competition may, but it does not necessarily, justify a preference to a particular locality or commodity, and therefore, granting that discrimination against a locality which is based on such competition is excusable in theory, the question still remains whether under the third section it is undue or unreasonable; and that question is one of fact in each case.
4. Carriers frequently disregard distance in making their rates, and they may lawfully do so under some circumstances; but distance should be regarded whenever possible, and no previous decision is authority for a ruling that a carrier may be compelled to disregard it for the purpose of placing two communities upon a commercial equality.
5. Upon complaint brought on behalf of New York City, and alleging that differentials, allowed by the defendant carriers on grain, flour and provisions from Chicago and other western points, of 2 cents to Philadelphia and 3 cents to Baltimore below the rates to New York, are unlawful under section 3 of the Act to Regulate Commerce,—*Held*, That the differentials are legitimately based upon the competitive relations of the carriers, that it does not appear upon the present record that the carriers have exceeded the limit within which they are free to determine for themselves, and, accordingly, that the differentials complained of do not result in unlawful preference or advantage to Philadelphia or Baltimore over the City of New York.

John D. Kernan and Baldwin & Blackmar, for complainant.
Hugh L. Bond, Jr., for Balto. & Ohio System and Receivers.
James A. Logan, George V. Massey, John G. Johnson and
Evarts, Choute & Beaman, for Penna. System.
H. T. Wickham, for C. & O. Ry. Co.
R. W. de Forest, for Central R. R. Co., of N. J.
Samuel Hoar, for Boston & Albany R. R. Co.
S. E. Williamson, for N. Y. C. & St. L. Ry. Co.
Frank Loomis, for N. Y. C. & H. R. R. R. Co.
Ashbel Green, for West Shore R. R. Co.
Francis I. Gowen and F. H. Janvier, for Lehigh Valley
 R. R. Co.
George C. Greene, for L. S. & M. S. Ry. Co.
John B. Kerr, for N. Y. O. & W. R. R. Co.
Henry Russell and Ashley Pond, for Mich. Cent. R. R. Co.
J. D. Campbell, for Phila. & Reading R. R. Co. and Receivers.
G. M. Cumming, for Erie System.
E. W. Strong, for B. & O. S. W. Ry. Co.
T. J. O'Brien, for Grand Rapids & Indiana R. R. Co.
Silas W. Pettit, for Trades League, Board of Trade and Com-
 mercial Exchange of Philadelphia.
Sherman Hoar, for Boston Chamber of Commerce.
William A. Fisher, for Baltimore Chamber of Commerce.

REPORT AND OPINION OF THE COMMISSION.

PROUTY, *Commissioner*:

The New York Produce Exchange, the complainant in this matter, is a corporation under the laws of New York, composed of merchants residing in the city of New York and interested largely in the handling of grain and other produce at that point. No question is made as to its competency to commence and maintain this proceeding.

The defendants are various railroad companies engaged in the interstate transportation of freight, including grain and other produce, to New York and various other points upon the Atlantic seaboard. They admit that, with respect to such transportation, they are subject to the Act to Regulate Commerce.

The complainant attacks by its complaint certain differentials in freight rates upon the ground that they unduly prefer Boston, Philadelphia, Baltimore, Newport News and Norfolk as localities to the locality of New York. The Boston Chamber of Commerce, the Baltimore Chamber of Commerce and certain trade organizations in Philadelphia have intervened upon the ground that the commercial interests which they represent are or may be affected by the proceeding. Norfolk and Newport News have not been represented at any of the hearings.

Upon the trial the issue apparently narrowed itself to one between New York, Philadelphia and Baltimore. The Boston Chamber of Commerce appeared upon the first hearing in New York, but did not appear at any subsequent hearing, nor did it ask to be heard upon final argument. This seems to have been upon the assumption that the complainant made no question as between itself and Boston. That is, New York does not ask to be allowed a differential upon export traffic as against Boston. Neither do we understand that it has been suggested in this case that a different differential should be applied to Norfolk and Newport News than is applied to Baltimore. The controversy is really between the three cities, New York, Philadelphia and Baltimore. Whenever facts with reference to Boston, Newport News and Norfolk are stated, they are only given to make the statement complete as bearing upon the controversy between these three localities.

It incidentally appears that Boston has two rates,—an export and a domestic rate. The legality or propriety of these different rates was not referred to in the discussion of the case, and is not considered in its disposition. The differentials in question are those upon east-bound freight traffic to the above-named cities. There is no dispute as to the rates. Taking the rate to New York as a basis, the rate to Philadelphia is 2 cents per hundred pounds lower, all classes; and to Baltimore 3 cents per hundred pounds lower, all classes. Norfolk and Newport News take the Baltimore rate, and upon export traffic, Boston takes the New York rate.

The rate itself frequently varies, but the differentials are at all times and upon all classes the same. The rates complained of in this proceeding are those upon grain, flour and provisions, and

these rates from Chicago at the time of the filing of the complaint were as follows:

To	Grain.	Flour.	Provisions.
New York.....	20 cts.	20 cts.	30 cts.
Boston (for export).....	20 cts.	20 cts.	30 cts.
Philadelphia.....	18 cts.	18 cts.	28 cts.
Baltimore.....	17 cts.	17 cts.	27 cts.
Newport News.....	17 cts.	17 cts.	27 cts.
Norfolk.....	17 cts.	17 cts.	27 cts.

For the purpose of making the rates from various points in the middle west to the Atlantic seaboard, the Chicago-New York rate is taken as a basis, the rate from the other points being a per cent of this rate. Thus the rate from Detroit, Mich., is 78 per cent, from Indianapolis, Ind., 93 per cent, from East St. Louis, Ill., 116 per cent, and from Rock Island, Ill., 122 per cent. The rate from any one of these points to Philadelphia, Baltimore, Norfolk or Newport News is made by subtracting from the New York rate the fixed differential above given.

The territory within which rates are computed upon the basis of the New York-Chicago rate is that bounded, roughly speaking, by the Mississippi River upon the west, the Ohio River upon the south, a line drawn about due north from Pittsburg upon the east, and the Great Lakes upon the north, excluding most of the State of Wisconsin. Not only do the differentials affect all traffic which originates in this territory, but also all traffic which passes through this territory upon its way to the Atlantic seaboard.

The complaint also attacks what are known as the ex-lake differentials. Large quantities of freight, especially grain and flour, are brought through the Great Lakes to various points upon the southern shores of Lake Erie and Lake Ontario, from whence they are transported by rail to the Atlantic seaboard. Upon this a differential is applied of 1 cent per hundred pounds in favor of Philadelphia and Baltimore as against New York. This differential does not seem to apply to provisions. At the time of the filing of this complaint the rates from lake ports to Boston, New

York, Philadelphia and Baltimore respectively per hundred pounds were as follows:

To	Grain.	Flour.	Provisions.
New York.....	11 cts.	11 cts.	16 cts.
Boston (for export).....	11 cts.	11 cts.	16 cts.
Philadelphia.....	10 cts.	10 cts.	16 cts.
Baltimore.....	10 cts.	10 cts.	16 cts.

Special commodity rates by the bushel were also in effect from these lake ports to the above named cities. They were in lots of 8,000 bushels and over, to one consignee and one destination, as follows:

	Wheat.	Corn.	Barley.	Oats.
New York.....	5 cts.	4½ cts.	4½ cts.	3½ cts.
Boston (for export)...	5 cts.	4½ cts.	4½ cts.	3½ cts.
Philadelphia.....	4 cts.	3½ cts.	3½ cts.	3 cts.
Baltimore.....	4 cts.	3½ cts.	3½ cts.	3 cts.

It will be seen from the above tables that the regular differential upon grain when shipped in carload lots by the hundred pounds is 1 cent in favor of Baltimore and Philadelphia; when shipped under the special commodity tariff by the bushel it is considerably more, being 1 cent per bushel in the case of wheat and corn and ½ cent per bushel in the case of barley and oats. Grain for export would, of course, always be shipped under the commodity tariff.

Some knowledge of the history of these differentials is necessary to an understanding of the situation. The earliest agreed differential of which the testimony gives any account was that of 1869, by which Baltimore enjoyed an advantage of 10 cents per hundred pounds over New York. It does not appear what the differential in favor of Philadelphia was. In 1870 a war of rates occurred, with the result that the Baltimore differential was reduced to 5 cents per hundred pounds on grain and the lower classes of freight, while upon the higher classes of freight the differential was 10 cents per hundred pounds, and these differentials seem to have continued until about 1876. It does not appear what the differential of Philadelphia upon east-bound traffic was, but a tariff of November, 1875, gives the differentials upon west-bound traffic as follows:

	First Class.	Second Class.	Third Class.	Fourth Class.	Special Class.
Baltimore.....	10 cts.	9 cts.	8 cts.	6 cts.	5 cts.
Philadelphia. . .	7 cts.	7 cts.	6 cts.	4 cts.	3 cts.

In March, 1876, this system of an arbitrary differential was abandoned and the lines agreed upon a system of percentage differentials based upon the relative distances from western cities to Baltimore, Philadelphia, and New York, respectively, taking New York as the basis. Under this agreement the rate from Chicago to Baltimore was 13 per cent and to Philadelphia 10 per cent less than to New York, and from Cincinnati to Baltimore 24 per cent, and to Philadelphia 12 per cent less than to New York.

After a few weeks' experience, the New York Central and the Erie withdrew from this agreement upon the assertion that it was too favorable to Baltimore and Philadelphia. Thereupon another rate war ensued, which terminated in an agreement of April 5, 1877, by which fixed differences in rate were re-established in place of differences based upon relative distances. Under this agreement east-bound differentials from western points were 3 cents to Baltimore and 2 cents to Philadelphia upon all classes. On west-bound traffic the differentials in favor of Baltimore and Philadelphia differed with different classes, and were as follows:

From	First Class.	Second Class.	Third Class.	Fourth Class.
Baltimore.....	8 cts.	8 cts.	3 cts.	3 cts.
From				
Philadelphia	6 cts.	6 cts.	2 cts.	2 cts.

It would seem that the contentions between the carriers which had given rise to these differentials were mostly over export traffic, and that the differentials were insisted upon and were allowed for the purpose of permitting the various carriers to enjoy a portion of that traffic. The agreement of April 5, 1877, seems to have been made upon the idea of equalizing the cost of carriage from various interior shipping points to foreign ports. It recognized the fact that ocean freight rates from Baltimore and Philadelphia to such foreign ports were higher than from New York and that inland freights must be correspondingly lower so that the total freight might be the same.

The agreement provided that, upon the giving of certain notice, any party to it might withdraw, and in June, 1880, the New York Central gave notice of withdrawal, stating that the differentials were originally based upon supposed differences in ocean rates, that such differences no longer existed, that there-

fore the reasons for the differentials had ceased to exist and that the differentials themselves should also cease. The Pennsylvania and the Baltimore and Ohio insisted upon the differentials, and the action of the New York Central apparently led to another rate war, which terminated in the latter part of 1881 by a restoration of the differentials of April 5, 1877.

It would seem that the various Atlantic seaports which were served by these different railway lines had taken more or less interest in this subject of differentials. New York insisted that the differentials should be abolished; Philadelphia that there should be no difference between that city and Baltimore; and Baltimore that the differential of 3 cents allowed in its favor was too low; and each city strenuously contended that it was the duty of the railway lines serving that particular locality to insist upon and obtain an adjustment of these differentials in accordance with its views.

Apparently for the purpose of considering the claims of these different communities and perhaps placating the public rather than of settling the question for the carriers, the New York Central, the Erie, the Pennsylvania and the Baltimore & Ohio joined in requesting Allen G. Thurman, Elihu B. Washburne and Thomas M. Cooley to act as an advisory commission for the purpose of investigating and reporting upon the general matter of these differentials. These gentlemen accepted the invitation and entered upon their work in February, 1882.

In their investigation the railroad companies themselves declined to participate further than by furnishing to the commissioners whatever information might be asked for. This commission held sittings in New York, Philadelphia and Baltimore in the east, and in certain cities in the west, heard statements and arguments from the representatives of these various localities, collecting whatever information it could bearing upon the subject, and finally in July, 1882, made a report. This report seems to have been very carefully considered by the commissioners, and, while it deals largely in theory and generalities, it appears to be, as was to have been expected from the character of the gentlemen who signed it, an able and comprehensive review of the situation.

The conclusion at which they arrived was that distance could not be used as a measure of these differentials; neither could

cost of service. Competition, which embraced these two, and all other factors, if properly conducted through a series of years, was the most reliable guide. Competition, after many years, had resulted in fixing the differentials in force. Those differentials were justified to a certain extent by distance and to a certain extent by cost of service. The purpose of the differential was to equalize the cost of exporting grain and other merchandise through the various ports to which they were applied. A difference in ocean freight rates from those respective ports, corresponding generally to the inland differentials, was found to exist. Upon the whole, therefore, the commission declined to recommend that the differentials which had been agreed upon should be disturbed.

It will be seen, therefore, that in 1882 the fairness and reasonableness of the present differentials were approved by that board, and those differentials have ever since been in effect.

Manifestly, however, the conditions which determine the fairness of a differential are continually varying. That fact is clearly stated in the above report, in which it is said that if in the future the operation of these differentials should become burdensome to any one of the localities interested, they should be readjusted or abolished. The complainant insists that since 1882 conditions have so changed that, assuming them to have been just then, they are unjust to-day. The complainant's case attacks, first the general fairness of the differential, and seeks to show, second, that the arguments which justified the differentials in 1882 do not justify them to-day.

The complainant asserts at the outset that this difference in rate cannot be justified upon the score of a corresponding difference in distance. It so happens that the shortest distance from Chicago to New York, Philadelphia and Baltimore is in every instance by the Pennsylvania lines, being:

To	
New York,	912 miles.
Philadelphia,	822 "
Baltimore,	802 "

Merchandise is transported from Chicago to all three of these cities by many other lines, and the distances by these lines vary greatly. It is not deemed essential, however, to state these various distances, in the view we have taken of the application of distance to the disposition of this case.

One thing should, however, be noted in this connection. The distances above given are from Chicago, but by no means all of the traffic involved moves from Chicago, and if distance were to be regarded as a controlling factor and these differentials were to be adjusted upon the basis of distance, it would be necessary to know the relative distances from the point of origin of the traffic. Thus, spring wheat is raised mainly in the States of Wisconsin, Minnesota and the two Dakotas. Now, the complainants say that this section is naturally tributary to New York, and that the spring wheat crop is properly exported through that port. The corn belt lies farther south, and embraces Indiana, Illinois, Missouri, Kansas, Nebraska and Iowa. This territory, the advocates of Baltimore insist, is naturally tributary to that city, so that the greater amount of corn exports ought properly to go out through that port, and the testimony upon the part of Baltimore tends to show that it is the effort of her merchants to intercept this corn before it ever reaches Chicago and bring it to Baltimore, and that this effort is very largely successful.

For the purpose of showing the point of origin of this traffic as bearing upon the question of these differentials, a statement prepared under the direction of Mr. George R. Blanchard, commissioner of the Joint Traffic Association, was introduced by the complainants. This statement shows the origin of east-bound dead freight which originates at and west of the trunk line termini, including both all-rail and lake and rail traffic, and which is carried to the eastern termini of those lines. It is not deemed material to encumber this finding of facts with that statement. It embraces all the dead freight, and not merely that which is involved in this proceeding. This fact may, however, be noted, that the origin of dead freight is not fixed in its proportions, but continually varies from year to year.

This table extends from 1888 to 1896 inclusive. From it, it appears that in 1888, 15.6 per cent of such freight originated at Chicago, while in 1896 only 10 per cent originated there. In 1888, 2.7 per cent was classified as "unknown and local," while in 1896 this class embraced 14.3 per cent, much more than any other one class. It has already been noted that in this table the traffic in question is so intermingled with other traffic that no definite information is furnished as to it.

The complainant further insists that these differentials cannot be justified upon the basis of cost of service. No direct testimony was introduced upon this branch of the case. The complainant showed from the reports of the Pennsylvania Railroad Company that the cost of movement of all freight upon its lines in the year 1880 was 4.74 mills per ton per mile, and in 1895, 4 mills per ton per mile. Treating this as the cost of moving the commodities in question it would have cost in 1880, 2.13 cents per hundred pounds less from Chicago to Philadelphia than to New York, and 1.80 cents less per hundred pounds in 1895; in 1880, 2.60 cents per hundred pounds less to Baltimore than to New York, and in 1895, 2.20 cents less per hundred pounds. Upon this basis, therefore, the following differentials should have been allowed :

	1880	1895
Philadelphia	2.13 cts.	1.8 cts.
Baltimore	2.6 "	2.2 "

No computation of this sort can be of any value without knowing whether the basis of the computation is correct, or, in other words, whether the cost of moving the grain is as assumed.

In this connection one subject which was much discussed in the testimony may be referred to, since, if it has any force whatever, it is as bearing upon the additional cost of service. This subject is that of lighterage and terminal charges at the port of New York.

Export grain upon arriving at any of these seaports, is either placed in an elevator for storage or transferred directly to the vessel. At all the ports except New York the mode of proceeding seems to be to transfer the grain directly from the car to the elevator upon its arrival, and from the elevator to the vessel, when it is desired, the vessel being brought alongside the elevator for the purpose of receiving the grain.

In New York, upon the other hand, the grain is put in barges and towed to the side of the vessel, where it is transferred by a floating elevator from the barge to the vessel. It seems sometimes to be transferred directly from the car to the barge, but in the great majority of cases it is taken into the elevator in the first instance and from the elevator spouted into a barge in exactly the same way that it would be into the hold of the vessel.

The railroad company is at the expense of towing the barge to the side of the vessel, where the owner of the grain receives it and transfers it at his expense into the vessel. There was considerable testimony as to the cost to the railroad company of lightering grain; that is, towing the barge from the dock to the side of the vessel and giving it the four days' storage to which it was entitled, and this testimony is not altogether harmonious.

We find that the expense of this service is about $\frac{1}{2}$ cent a bushel. It costs about the same to transfer the grain directly from the cars to the barge as it does to transfer it into the elevator and thence discharge it into the barges. What this cost is did not appear.

By the agreement of April 5, 1877, it was provided that the terminal charges for the storing and loading of grain should be the same at all the ports, and this charge was then fixed at $1\frac{1}{2}$ cents per bushel, which has been the charge ever since. As a rule the railroad companies own the elevators in Boston, Philadelphia, Baltimore and probably at Norfolk and Newport News. When, therefore, the carrier transports grain from Chicago to Baltimore and puts it aboard a vessel there, it receives for that entire service the regular freight rate, and in addition the terminal charge of $1\frac{1}{2}$ cents. At New York the carrier takes the grain into its elevator, discharges it into barges and then tows those barges to the side of the vessel, receiving therefor merely the freight rate. The $1\frac{1}{2}$ cents per bushel paid for elevating at New York is received by the floating elevator company. It follows, therefore, that the carrier at New York renders for nothing the same service for which it is paid $1\frac{1}{2}$ cents at all the other ports, and in addition incurs lighterage expenses of $\frac{1}{2}$ cent per bushel.

The intervenors strenuously insisted that this additional burden under which the carriers rested at New York in the handling of grain for export justified the imposition of the differential.

It is indicated above that grain is only lightered at the port of New York. This is not quite the fact. Considerable quantities are lightered at Philadelphia, just how much did not appear, and some at Boston. In these cases, as at New York, the expense of the lighterage is borne by the carrier.

The agreement of April 5, 1877, by which these differentials were originally fixed, recognized as their justification the fact that

the ocean freights to European markets were less from New York than from Baltimore and Philadelphia, and that the inland rates to New York ought to be correspondingly higher in order to equalize the through rate. The Advisory Commission of 1882 found this same condition of things and made that, in some measure at least, a reason for recommending that the differentials be not disturbed. The complainant says that whatever the condition may have been in 1877, or whatever it may have been in 1882, at the present time ocean freights upon grain, flour and provisions are substantially the same from all the ports.

The testimony in this case shows that grain is exported in two ways: first, by full cargo; second, by berth rate. The ocean carriage is said to be by full cargo when the ship is loaded entirely with one kind of merchandise and carries no other freight. It did not appear that flour or provisions were ever exported in full cargo lots, although that may be rarely done. Grain, especially corn, is frequently exported in that way. Sometimes the ship taking the full cargo of grain comes from a foreign port to this country in ballast entirely for that purpose. Oftener it arrives here loaded or partly loaded with some kind of merchandise and seeks a return load. The testimony was that vessels for full cargo business could be chartered at practically the same price to load at either New York, Baltimore, Philadelphia, Norfolk or Newport News. If the vessel comes to the Atlantic coast for the purpose of obtaining and carrying away a cargo of corn, it is difficult to see any reason why it would not transport that corn at the same price per bushel from either of these ports. Nor did the defendants or the intervenors seriously contend that this was not ordinarily the case in full cargo business. It was alleged, however, upon the part of the intervenors that there were certain advantages at New York in doing a full cargo business, and upon the part of the complainants that there were certain advantages at the other ports in this class of business.

The great bulk of imports land at New York. If a ship is at New York, having come there with a load of merchandise, it naturally prefers to take its return cargo at that point rather than be to the expense of proceeding to some other port. The testimony showed that it would proceed to any of the other ports from New York, or from any outport to any other Atlantic out-

port for about $\frac{1}{3}$ of one cent per bushel in the freight rate. Since more vessels seeking return cargoes are consigned to New York than to the other ports this would perhaps constitute a slight advantage in favor of that port.

Upon the other hand, it appears that what are called the port charges are higher at New York than at either Baltimore or Philadelphia. Just what these port charges consist of and just how great a burden they are did not appear, but it costs a vessel more by some degree to enter and load at the port of New York than it does at its sister ports, and to that extent New York rests under a disadvantage in this full cargo business.

So, also, it was claimed that vessels loading at Baltimore, Norfolk and Newport News had during the winter months a certain advantage, in that they could load more deeply than if they cleared from Philadelphia or a port north. It seems that the insurance companies require that the vessel shall not load below a certain line, which is fixed by the Board of Trade of England. This line is the same for all ports during the summer months, but during the winter months vessels are permitted to load deeper when they clear from ports south of Philadelphia than when they clear from Philadelphia or a port north, the line to which they are permitted to load in case of the latter ports being known as "the north Atlantic winter load-line."

It did not appear just what the value of this privilege available at the southern ports was. It would, of course, depend upon the size of the vessel. The testimony tended to show that with the ordinary tramp steamer which engages in this full cargo grain business, the difference would be from \$200 to \$600 a cargo.

Baltimore and Philadelphia asserted that they were under disadvantages as compared with New York in the matter of distance and in the ease with which a ship put to sea from these respective ports. Thus, it is from Baltimore to the ocean something like 150 miles, and after the ocean is reached, somewhat farther to the foreign port. In the case of Philadelphia low water interferes with a ready passage out to sea, so that the time consumed in waiting for a proper tide is from ten to twenty-four hours. Now, while this is not a serious matter, nevertheless, it does constitute a certain disadvantage in case of these two ports, which is not experienced at New York.

Upon the whole we are of the opinion that, so far as the full cargo business is concerned, there is no appreciable difference in cost, and no appreciable difference in the ocean rate from the three ports, New York, Baltimore and Philadelphia. There might be exceptional cases or exceptional times when the rate would rule a trifle lower from one port than from the other, but we are satisfied that, taking the whole year together, or a succession of years, the expense and the rate must be substantially the same.

Nor are we able to find that the conditions in respect to full cargo ocean rates were different in 1882 than they are to-day.

Merchandise is said to be carried at berth rates when it does not constitute the entire freight cargo of the vessel, but only a portion of it. Regular lines of steamships ply between all the ports in question and European grain markets. These steamships sometimes carry passengers, but always carry freight, and their cargoes are made up of miscellaneous articles. Some articles are regarded in ocean carriage, as well as in carriage by rail, as of a higher class than others, and take a higher rate, although there does not seem to be the same difference upon the ocean as upon the railroad. In each case, however, grain is regarded as one of the lowest classes of freight, and bears a correspondingly low freight rate.

The testimony showed that fluctuations in berth rates were very great. Taking the rate on wheat for an illustration, the rate might fluctuate in a single year from 2 to 12 cents per bushel. This variation is occasioned by the law of demand and supply. The regular line steamer is advertised to leave at a certain date. It has a certain amount of freight space, and the expense of running the steamer is practically the same whether loaded with freight or not. Indeed, until modern construction provided a water ballast, it was necessary to have a certain amount of freight for ballast in order to navigate the vessel. This steamship, as the time for sailing approaches, will manifestly sell its space for whatever price it can obtain. It follows, therefore, that the same vessel may often carry freights of the same kind at different rates, that the quoted price and the price actually paid may be entirely different, and that the price to-day may be no indication of the price a week hence. The intervenors insist

that while New York may not have any advantage in the matter of cargo rates, it has an enormous advantage in the matter of berth rates, and several reasons for this are shown.

In the first place New York has a great many more lines than either Boston, Baltimore or Philadelphia, indeed a great many more than all three of these cities taken together. These lines reach many foreign ports at which American grain is bought which cannot be reached from the "outports" so-called. Steamers sail much more frequently from New York to all foreign markets than from either Baltimore or Philadelphia. The result is that New York offers much better facilities in the way of ocean transportation than do any of the outports. These additional facilities attract, first of all, the higher classes of freight, but when that freight is absorbed the residuum of the berth space which is available for the transportation of lower grades of freight, of which grain is the principal one, is always large, so that there are usually offerings of berth space in New York much in excess of those at any other, or at all other ports for the transportation of grain. That is, not only can grain be exported from New York by berth rate to many ports not available to Baltimore and Philadelphia, but it can usually be transported at lower rates than can be had at either of these cities. Still another advantage is that at New York cargoes of different commodities can be more easily made up than at the outports for the reason that the offerings of freight at New York for a particular place are much larger. As already indicated, the great bulk of berth rate business is done by regular line steamers, but considerable business of that sort is done by steamships sailing at irregular intervals whenever a load can be obtained. These vessels take various kinds of commodities but usually require them to be consigned to the same port. It is evident that in New York a steamer of this kind would be able to obtain a cargo for a particular foreign port much more readily than at either Baltimore or Philadelphia, since, as will be seen hereafter, the great bulk of our exports, other than grain and flour, move out through the port of New York.

A great deal of testimony was introduced, both by the complainant and by the intervenors, as to relative berth rates from the four ports, Boston, New York, Baltimore and Philadelphia.

The complainant introduced three tables, showing the average quoted rates in cents per bushel on wheat from these four ports, covering the years 1882 to 1896, inclusive. The first table is from December 1st to April 30th, that being the season when the canal is closed; the second from May 1st to November 30th, that being the canal season; and the third table covering the entire calendar year. These tables are given below, and are numbered Tables No. 1, No. 2 and No. 3:

TABLE No. 1.

AVERAGE OCEAN FREIGHTS† QUOTED ON WHEAT from the undermentioned ports to LIVERPOOL, for the NON-CANAL SEASON.

December 1st to April 30th.

Non-Canal Season.	New York. Per 60 lbs.	Boston. Per 60 lbs.	Philadelphia. Per 60 lbs.	Baltimore. Per 60 lbs.
	cents.	cents.	cents.	cents.
1881-82.....	*6	†5½	8½	*7½
1882-83.....	11½	9½	12½	12½
1883-84.....	5½	4½	6½	7½
1884-85.....	8½	7½	---	9½
1885-86.....	5½	3½	---	7½
1886-87.....	6½	6	---	7½
1887-88.....	2½	4	---	3½
1888-89.....	7½	6½	---	10
1889-90.....	8½	8½	---	10½
1890-91.....	4½	4½	---	6½
1891-92.....	7½	6½	---	8½
1892-93.....	2½	2½	*4½	4½
1893-94.....	5½	4½	6½	6½
1894-95.....	4½	3½	5½	5½
1895-96.....	4½	4½	5	5½
1896-97.....	5½	6½	6½	6½

* January 1st to April 30th only.

† January 1st to March 31st only.

‡ Reduced from sterling quotations on the basis of 1d. = 3 cents.

TABLE No. 2.

AVERAGE OCEAN FREIGHTS† QUOTED ON WHEAT from the undermentioned ports to LIVERPOOL, for the CANAL SEASON.

May 1st to November 30th.

Canal Season.	New York. Per 60 lbs.	Boston. Per 60 lbs.	Philadelphia. Per 60 lbs.	Baltimore. Per 60 lbs.
	cents.	cents.	cents.	cents.
1882.....	7 $\frac{1}{8}$	*7 $\frac{1}{8}$	---	10 $\frac{3}{8}$
1883.....	7 $\frac{1}{8}$	5 $\frac{1}{2}$	---	9 $\frac{1}{2}$
1884.....	7 $\frac{1}{8}$	5	---	8 $\frac{1}{2}$
1885.....	5 $\frac{5}{8}$	4	---	6
1886.....	6 $\frac{1}{8}$	4 $\frac{3}{4}$	---	7 $\frac{1}{2}$
1887.....	4 $\frac{1}{2}$	3 $\frac{1}{2}$	---	5 $\frac{1}{2}$
1888.....	6 $\frac{1}{8}$	5 $\frac{1}{2}$	---	7 $\frac{1}{2}$
1889.....	7 $\frac{1}{8}$	6 $\frac{1}{2}$	---	8 $\frac{3}{8}$
1890.....	2 $\frac{1}{2}$	2 $\frac{1}{4}$	---	2 $\frac{3}{8}$
1891.....	6 $\frac{1}{8}$	5	---	7
1892.....	4 $\frac{3}{4}$	4	---	6 $\frac{1}{2}$
1893.....	5 $\frac{1}{2}$	4 $\frac{3}{4}$	6 $\frac{3}{8}$	5 $\frac{3}{8}$
1894.....	2 $\frac{1}{2}$	1 $\frac{1}{2}$	3 $\frac{3}{8}$	3 $\frac{3}{8}$
1895.....	4 $\frac{1}{8}$	2 $\frac{3}{8}$	4 $\frac{1}{2}$	4 $\frac{3}{8}$
1896.....	6 $\frac{1}{2}$	3 $\frac{1}{2}$	6 $\frac{1}{2}$	6 $\frac{3}{8}$

* July 1st to November 30th only.

† Reduced from sterling quotations on the basis of 1d.=2 cents.

TABLE No. 3.

ANNUAL AVERAGE OCEAN FREIGHTS† QUOTED ON WHEAT from the undermentioned ports to LIVERPOOL for the CALENDAR YEAR.

Calendar Year.	New York. Per 60 lbs.	Boston. Per 60 lbs.	Philadelphia. Per 60 lbs.	Baltimore. Per 60 lbs.
	cents.	cents.	cents.	cents.
1882.....	7 $\frac{1}{8}$	---	---	10
1883.....	8 $\frac{3}{8}$	6 $\frac{1}{2}$	---	10 $\frac{1}{2}$
1884.....	7	5	---	7 $\frac{1}{2}$
1885.....	6 $\frac{3}{8}$	5	---	7 $\frac{3}{8}$
1886.....	6 $\frac{3}{8}$	4 $\frac{3}{4}$	---	7 $\frac{3}{8}$
1887.....	5	4 $\frac{1}{2}$	---	6
1888.....	5 $\frac{1}{2}$	5 $\frac{1}{2}$	---	6 $\frac{1}{2}$
1889.....	7 $\frac{1}{8}$	6 $\frac{3}{8}$	---	9
1890.....	4 $\frac{1}{2}$	4 $\frac{1}{2}$	---	5 $\frac{3}{8}$
1891.....	6 $\frac{1}{2}$	5 $\frac{3}{8}$	---	6 $\frac{1}{2}$
1892.....	5 $\frac{1}{2}$	4 $\frac{1}{2}$	---	6 $\frac{3}{8}$
1893.....	4 $\frac{1}{2}$	3 $\frac{3}{4}$	5 $\frac{1}{2}$	5 $\frac{3}{8}$
1894.....	3 $\frac{1}{2}$	3	4 $\frac{1}{2}$	4 $\frac{3}{8}$
1895.....	5 $\frac{1}{2}$	3 $\frac{1}{4}$	4 $\frac{3}{8}$	4 $\frac{1}{2}$
1896.....	5 $\frac{3}{8}$	4 $\frac{1}{2}$	5 $\frac{1}{8}$	6 $\frac{1}{2}$

† Reduced from sterling quotations on the basis of 1d.=2 cents.

We do not regard these tables as altogether reliable, although they are probably the best that could be furnished under the circumstances. In most instances they represent the quoted rate; in some, particularly in case of New York, they stand for actual engagements, and show the price actually paid. It has already been suggested that the quoted price and the actual price often vary considerably. No data at all are available apparently in case of Philadelphia until the year 1893, and those from Baltimore are extremely unreliable.

We are inclined to think, taking the whole testimony in the case together, that it fairly appears that there is, as a rule, between Boston and New York a difference in the berth rate upon grain in favor of Boston, and that this difference amounts at the present time to something in the vicinity of 1 cent per hundred pounds; that there is a difference in favor of New York between New York and Philadelphia which amounts, perhaps, to from $1\frac{1}{2}$ to 9 cents per hundred pounds; and that about the same difference exists against Baltimore. We are unable to find that there is any appreciable difference in the ocean berth rate from Baltimore and Philadelphia. We are inclined to think also that since 1882 this difference between New York and the outports has been gradually diminishing. The rates from Boston differed from those in New York rather more in 1882 than to-day, and the same thing appears to have been true of Baltimore and Philadelphia. From the very nature of the case, however, no definite finding in this respect can be made.

It did not appear why the rate at Boston should be lower than at New York, save that the dockage expenses and other port charges were somewhat less at the former port. The Boston steamers are inferior in speed and in capacity to New York steamers.

No testimony was introduced showing exactly what cargo rates had been at any time or during any period. It appeared generally that they were ordinarily higher and much more stable than berth rates, and that a cargo business could not be done until the berth space had been exhausted or until the berth rate had risen to a point above the average.

We have no information from which it can be stated what the relative amount of cargo and berth business in grain has been for any length of time since 1882.

With the exception of cargoes from New York to a particular point which is hereafter referred to, wheat is very seldom exported by the cargo. Cargo business is almost entirely confined to corn. The complainant introduced a table showing the relative amount of berth rate and cargo exports for the years 1895 and 1896 in wheat and in corn. This table is given below, and is No. 4:

TABLE No. 4.

(Where steamers carried both wheat and corn, they have been counted under each head.)

WHEAT.

PORTS.	Exports, Bushels.	1895. Carried in Grain Cargoes.			Exports, Bushels.	1896. Carried in Grain Cargoes.		
		Bushels.	Per cent.	No. of Cargoes.		Bushels.	Per cent.	No. of Cargoes.
New York.....	20,339,263	6,707,934	33.0	66	18,476,263	4,056,378	21.9	55
Boston	4,810,384	-----	-----	---	9,838,955	-----	-----	---
Philadelphia	1,537,226	461,165	30.0	5	4,863,886	2,831,017	58.2	29
Baltimore	3,977,261	-----	-----	---	6,589,856	2,085,199	31.6	22
Norfolk	165,765	165,765	100.0	2	-----	-----	-----	---
Newport News..	1,185,400	361,431	30.5	6	17,327	-----	-----	---
Totals	32,015,209	7,696,295	---	79	39,786,287	8,973,094	---	106
CORN.								
New York.....	19,626,817	892,051	4.6	10	19,100,190	1,797,032	9.4	24
Boston	5,320,083	-----	-----	---	5,893,209	-----	-----	---
Philadelphia	3,307,413	524,818	15.9	5	8,829,376	4,947,789	56.0	46
Baltimore	9,645,758	1,896,452	19.7	18	26,382,182	10,297,059	39.0	99
Norfolk	3,545,363	Incompl't	*	*	12,891,285	8,977,802	69.6	81
Newport News..	4,866,335	2,278,872	46.8	22	10,376,625	5,042,104	48.6	50
Totals	46,311,769	*5,592,193	---	*55	83,472,867	31,061,836	---	300

* Exclusive of Norfolk for 1895, which cannot be given from any data in our possession.

It will be seen from an examination of the above table that the exports for 1896 were somewhat larger in wheat and almost twice as great in corn as in 1895; that what may be called the excess

exports of 1896 over those of 1895 went mostly by cargo shipments, and that these excess cargo shipments were almost entirely from Philadelphia, Baltimore, Norfolk, and Newport News. The complainant introduced another table showing the number of cargoes of corn exported from New York, Philadelphia and Baltimore for the years 1893 to 1896, inclusive. This table is designated as No. 5 and is as follows:

TABLE No. 5.

	New York. Cargoes. Corn.	Philadelphia. Cargoes. Corn.	Baltimore. Cargoes. Corn.	Totals. Cargoes. Corn.
1893	1	11	7	19
1894	2	5	17	24
1895	7	7	18	27
1896	19	41	77	137
Totals	29 cargoes.	64 cargoes.	114 cargoes.	207 cargoes.

New York shipped 29 cargoes corn, equal to 14%.

Philadelphia " 64 " " " 31%.

Baltimore " 114 " " " 55%.

207 cargoes.

From this it appears that in the four years New York shipped 29 cargoes; Philadelphia, 64; and Baltimore, 114, which gives New York 14 per cent of the entire cargo business for that series of years.

Mr. Neal, a witness for the intervenors, testified from records in his possession that from 1878 to 1896 there had been exported from the three ports in all 1,357 full cargoes of corn, and that of these 187 had gone from New York, 499 from Philadelphia, and 671 from Baltimore. This, too, would give New York in that series of years just 14 per cent of the full cargo business.

It may well be inquired how, in view of the differentials and in view of the fact that full cargo rates are the same from all these ports, New York manages to do any full cargo business. It appears that Boston under the operation of the same condition of things does not. It is impossible to answer this question with certainty. New York has much the largest storage capacity. It has a corn market and a wheat market, and stocks of corn and

wheat are carried for delivery. The result is that a full cargo can be loaded and shipped from New York quicker than from the other ports, and very often cheaper, as the price fluctuates upon the Chicago market.

It appears, too, with reference to the full cargo business in wheat, which was considerable from New York in both 1895 and 1896, that most of it consisted of cargoes for Lisbon, Portugal. The trade at that point requires a New York bill of lading, and for this reason shipments to fill those orders are made from New York, although the same grade of wheat could, perhaps, be obtained somewhat more cheaply at some other port.

The complainant claimed that if the object of these differentials was to equalize the cost of exporting grain through the three ports, then the cost of grain in Europe should be the same by each port, whereas, in point of fact, it was and had been less through the outports than through New York.

It appeared that this export business was largely done by grain brokers. These people do not as a rule own the grain themselves nor carry stocks from which their orders are filled. Upon receiving an order, they go into the market and fill it at the least price possible. They sometimes sell the grain on board the vessel on this side, but ordinarily it would appear that their price includes a delivery in Europe. Agencies are often maintained by them in Chicago, and it appears that they purchase grain to fill export orders in one of three ways. They may purchase the corn in the west, paying themselves the transportation charges to the seaboard and so across the water. They may buy the grain F. O. B. the vessel at some American port. This embraces all the charges which are necessary to deliver the grain upon the vessel, including the freight rate and the terminal charge; or they may purchase the grain what is called C. I. F. Europe. These three letters signify cost, insurance and freight, and that kind of a contract calls for the delivery of the grain in Europe, or its equivalent in insurance money if the grain is lost. It appeared that these brokers themselves in recent times had almost exclusively confined their operations to the purchase of export grain either F. O. B., at the Atlantic seaboard or C. I. F. Europe. Although their agencies still continued to be maintained in some instances in the west, little or no business was transacted through them. This

was for the reason that they could purchase the grain F. O. B. or C. I. F. cheaper than they could buy it in the west and pay the transportation charges themselves.

The testimony of these gentlemen showed that the price of grain F. O. B. or C. I. F. was not at all times the same through the different ports. Sometimes it could be exported cheaper through Baltimore; sometimes through Philadelphia; and sometimes through New York; but, on the whole, the preponderance of this testimony was that in the year 1896 prices had ruled cheaper through the outports than through New York.

We attach very little importance to this testimony. These brokers have no stock in trade. They have no expensive plant which they must utilize at a particular point. While for the most part they reside and have their principal place of business in New York, they can, with almost equal convenience do business through any one of the three ports. It was conceded by all that a difference in cost of from $\frac{1}{8}$ to $\frac{1}{4}$ of a cent a bushel would divert grain from one port to the other, and these brokers always know what grain can be purchased for at each one of these three ports. The conclusive answer, therefore, to the inquiry, through which port at a particular time was the price of grain C. I. F. Europe the cheapest is found in observing through what port grain at that time actually moved.

The complainant claimed that the operation of these differentials had been growing more and more burdensome to New York ever since 1882, and that matters had come to that pass that they were a menace to the commerce of that port, and in confirmation of this they instituted a comparison of the exports of the commodities in question through the different ports for the years 1895 and 1896, from which a very striking falling off at New York appears.

The intervenors replied that while a comparison of the year 1896 with the year 1895 might show unfavorably to the port of New York, no comparison of any two single years could be a fair test, that the differences in those two years were no greater than might be observed between some other two preceding years if properly selected, that New York had not lost absolutely but only relatively, and that the loss to New York was not owing to any gain by Baltimore and Philadelphia, but to the fact that Norfolk, Newport News, Galveston and New Orleans had become new

factors in the export situation, owing to the opening up and improvement of new lines of transportation to these ports.

As bearing upon these contending claims a great mass of statistics was introduced upon both sides. All of this matter has undoubtedly some bearing upon this question. Much of it is interesting, but to reproduce it all, or to even consider it all in any finding of fact, giving to each piece of testimony its due weight, would be utterly impossible. We reproduce here sufficient of the tables introduced by the respective parties to show what their claims were and the nature of the testimony upon which they relied, and to also show in a general way the actual situation at these respective ports.

The following is a table showing the total receipts and the total exports of flour, wheat and corn in bushels at New York, Boston, Philadelphia, Baltimore, Norfolk and Newport News for the years 1873 to 1896, inclusive. It is marked No. 6:

TABLE No. 6.
JANUARY 1ST TO DECEMBER 31ST. (100 PER CENT. = TOTALS AT, OR FROM, THE 6 PORTS.)

Percentage of receipts of FLOUR, WHEAT and CORN in bushels at										Percentage of exports of FLOUR, WHEAT and CORN in bushels from					
Jan. 1 to Dec. 31.	NEW YORK.			Boston	Phila- delph'a.	Balti- more.	New- port News.	Jan. 1 to Dec. 31.	New York.	Boston	Phila- delph'a.	Balti- more.	New- port News.		
	By Rail.	By Ca- mail and Water.	Total.												
1873.....	28.8	32.6	61.4	10.9	14.3	13.3	*	1873.....	77.9	2.4	6.9	12.7	*		
1874.....	33.0	29.5	62.5	9.7	12.6	15.2	*	1874.....	74.8	2.6	7.9	14.7	*		
1875.....	33.1	24.9	58.0	11.0	16.3	14.6	*	1875.....	67.6	4.9	11.8	15.5	*		
1876.....	28.8	18.2	47.0	12.0	19.1	21.7	*	1876.....	49.4	5.4	20.4	24.5	*		
1877.....	25.0	26.5	51.5	12.3	14.3	21.6	*	1877.....	54.8	5.7	13.1	26.0	*		
1878.....	29.9	23.7	53.6	9.8	17.2	19.3	*	1878.....	54.1	6.8	16.7	22.3	*		
1879.....	31.8	19.3	51.1	9.8	16.2	23.8	*	1879.....	53.0	6.4	14.9	25.6	*		
1880.....	28.1	24.1	52.2	11.4	15.9	20.4	*	1880.....	56.3	7.9	13.7	22.0	*		
1881.....	38.5	16.6	55.1	14.4	11.3	19.1	*	1881.....	57.6	9.7	10.4	22.2	*		
1882.....	38.9	18.4	57.3	15.7	10.5	16.1	0.4	1882.....	61.5	9.6	7.5	20.7	0.6		
1883.....	32.5	20.0	52.5	17.6	10.8	18.4	0.3	1883.....	54.5	11.3	9.9	23.3	0.6		
1884.....	33.7	20.4	54.1	18.0	9.2	18.1	--	1884.....	53.6	14.9	8.4	22.2	0.9		
1885.....	37.1	18.4	55.5	15.0	10.8	18.1	--	1885.....	54.6	11.7	11.5	21.3	0.9		
1886.....	31.4	23.6	55.0	15.1	8.2	18.6	--	1886.....	52.1	11.1	7.6	24.8	4.4		
1887.....	29.2	24.2	53.4	14.4	11.0	19.4	0.3	1887.....	53.9	10.5	10.0	23.3	1.9		
1888.....	31.1	23.8	54.9	15.9	8.8	19.4	0.1	1888.....	54.2	13.5	6.2	24.5	1.5		
1889.....	30.7	20.1	50.8	15.2	8.7	24.4	--	1889.....	51.6	11.7	6.8	28.8	1.1		
1890.....	28.9	15.6	44.5	12.6	17.3	23.8	--	1890.....	43.1	8.8	17.2	28.5	2.4		
1891.....	41.5	13.0	54.5	12.0	11.5	18.0	1.0	1891.....	52.9	9.0	10.2	22.2	4.3		
1892.....	38.9	8.5	47.4	10.9	18.8	19.5	0.6	1892.....	43.6	8.9	18.1	25.0	3.6		
1893.....	29.5	20.0	49.5	14.5	12.8	18.7	0.5	1893.....	49.5	11.4	10.2	22.8	0.7		
1894.....	27.0	18.9	45.9	15.5	14.3	18.1	0.7	1894.....	46.8	13.0	9.4	22.2	5.4		
1895.....	41.2	5.2	46.4	15.5	11.7	17.7	2.2	1895.....	47.6	13.1	7.0	19.8	7.7		
1896.....	30.3	6.3	36.6	14.5	13.6	22.1	5.6	1896.....	33.7	12.7	9.5	26.6	9.3		
Average.....	32.4	19.6	52.1	13.4	13.1	19.1	0.5	Average.....	54.1	9.2	11.0	22.5	8.6		
							\$ 1.6						\$ 2.3		

* Baltimore's Flour receipts are exclusive of city milling.
 † Receipts at Norfolk and Newport News not procurable, hence the quantity exported has been taken as the quantity received.
 ‡ Average since 1881.
 § Average since 1874.

The table below, marked No. 7, states the relative proportions of the total receipts of flour and all kinds of grain, including oats, rye and barley, in bushels, including receipts of wheat, corn, oats, rye and barley, at the four named Atlantic ports for the years 1878 to 1896, inclusive:

TABLE No. 7.

During year	New York, per cent.	Boston, per cent.	Philadelphia, per cent.	Baltimore, per cent.	Total per cent.
1878.....	55.7	10.0	16.9	17.4	100
1879.....	52.7	10.6	15.4	21.3	100
1880.....	53.4	11.8	15.9	18.9	100
1881.....	56.4	14.4	11.9	17.8	100
1882.....	59.8	15.7	10.9	14.1	100
1883.....	56.1	17.0	10.9	16.0	100
1884.....	56.8	17.5	10.6	15.6	100
1885.....	58.1	15.3	11.5	15.3	100
1886.....	57.8	16.8	9.8	16.6	100
1887.....	56.5	14.9	11.5	17.1	100
1888.....	57.6	16.5	9.8	16.1	100
1889.....	54.9	15.2	9.5	20.4	100
1890.....	51.5	13.3	15.7	19.5	100
1891.....	59.7	12.7	11.6	16.0	100
1892.....	52.2	12.1	18.0	17.7	100
1893.....	54.6	15.2	13.0	17.3	100
1894.....	53.6	16.5	14.6	16.3	100
1895.....	53.6	16.6	12.9	16.9	100
1896.....	50.1	14.7	13.1	22.1	100
Average.....	55.1	14.5	12.8	17.4	

Below is given the same table with the addition of Norfolk and Newport News, which shows the extent to which those ports have become a factor in the situation of recent years. It must be remembered that the exports do not necessarily correspond with the receipts. There is at New York for example an enormous domestic consumption, while at Newport News there is practically none.

TABLE No. 8.

During year.	New York, per cent.	Boston, per cent.	Philad'phia, per cent.	Baltimore, per cent.	*Norfolk, per cent.	*Newport News, per cent.	To p ce
1878...	55.7	10.0	16.9	17.3	0.1	---	10
1879...	52.7	10.6	15.4	21.2	0.1	---	10
1880...	53.3	11.8	15.9	18.9	0.1	---	10
1881...	56.3	14.4	11.9	17.3	0.1	---	10
1882...	59.1	15.6	10.9	14.1	---	0.3	10
1883...	55.8	17.0	10.9	15.7	0.3	0.4	10
1884...	56.1	17.4	10.5	15.5	---	0.5	10
1885...	57.8	15.1	11.5	15.1	---	0.5	10
1886...	55.8	15.9	9.6	16.3	---	2.5	10
1887...	55.7	14.6	11.4	16.9	0.3	1.2	10
1888...	57.3	16.4	9.7	16.0	---	0.7	10
1889...	54.5	15.1	9.5	20.3	---	0.6	10
1890...	50.6	13.0	15.4	19.3	---	1.3	10
1891...	57.4	12.3	11.2	15.4	0.9	2.9	10
1892...	50.4	11.7	17.4	17.1	0.6	2.3	10
1893...	52.7	14.6	12.5	16.6	0.4	2.2	10
1894...	50.0	15.7	13.9	15.5	0.5	4.4	10
1895...	49.8	15.5	12.0	15.7	1.7	5.3	10
1896...	44.7	13.2	11.7	19.7	4.1	6.6	10

*Total receipts at Norfolk and Newport News not procurable, hence the quantity exported has been taken as the quantity received.

A statement was prepared under the direction of Mr. Blawie, Commissioner of the Joint Traffic Association, showing tons the dead freight forwarded by the defendants to the p named for the years 1888 to 1896, inclusive. From that state the following statement is taken, showing these facts with ence to flour, grain and mill stuff, provisions and lard, and showing the grand total of all kinds of freight. This is designated as No. 9:

TABLE No. 9.
FLOUR.
TOTAL TONS FORWARDED BY ALL ROADS TO

Years.	Balto. & Vicinity.	Boston & Vicinity.	N. York & Vicinity.	Phila. & Vicinity.	Norfolk, N. News, Richmond & Vicinity.
1888.....	105,834	42,402	62,437	39,754	-----
1889.....	25,512	21,850	41,922	29,995	-----
1890.....	34,178	19,818	37,834	25,144	-----
1891.....	26,235	21,857	45,966	34,595	-----
1892.....	39,094	31,193	57,932	40,861	-----
1893.....	33,530	47,384	73,275	47,377	19,516
1894.....	25,953	27,179	54,299	25,953	13,833
1895.....	32,126	33,101	55,565	29,345	64,434
1896.....	30,423	29,518	53,043	31,420	73,297

GRAIN AND MILL STUFF.

1888.....	121,116	179,073	344,158	155,523	-----
1889.....	140,578	136,167	319,292	167,424	-----
1890.....	185,717	175,200	450,705	333,223	-----
1891.....	96,003	159,151	457,912	331,330	-----
1892.....	143,411	149,263	476,626	265,353	-----
1893.....	106,184	211,737	415,450	237,306	81,023
1894.....	143,992	223,426	302,358	230,179	35,510
1895.....	129,153	361,949	410,433	233,733	87,603
1896.....	260,127	365,173	510,491	172,876	161,556

PROVISIONS AND LARD.

1888.....	29,506	49,623	130,744	47,900	-----
1889.....	45,177	68,313	206,473	49,260	-----
1890.....	74,743	84,813	217,292	55,325	-----
1891.....	61,357	55,631	153,440	48,751	-----
1892.....	55,367	52,753	151,419	51,789	-----
1893.....	58,463	60,123	133,551	51,633	15,574
1894.....	70,140	78,075	233,996	53,933	15,476
1895.....	77,172	104,861	297,255	52,215	20,054
1896.....	74,862	101,913	201,358	57,424	46,244

GRAND TOTAL.

1888.....	349,695	331,237	792,647	337,333	-----
1889.....	341,150	354,237	693,706	410,334	-----
1890.....	441,736	412,593	1,021,768	636,345	-----
1891.....	306,965	358,997	956,948	451,343	-----
1892.....	390,515	370,169	969,132	497,499	-----
1893.....	353,563	496,359	1,036,996	466,719	81,303
1894.....	376,240	533,067	1,023,872	437,909	51,215
1895.....	330,496	743,900	1,390,876	484,343	140,763
1896.....	497,561	751,936	1,293,663	325,933	323,923

The complainant introduced a statement showing the number and tonnage of vessels in the foreign trade which entered at and

cleared from the ports named during each year from 1882 to 1896, inclusive. The following are for the years 1882, 1886 and 1896:

TABLE No. 10.

1882.

	No. Entered.	Tonnage.	No. Cleared.	Tonnage.
New York	6,525	7,360,848	6,180	7,263,174
Boston	3,018	1,416,231	2,950	1,305,172
Philadelphia	1,818	1,055,961	1,156	969,163
Baltimore	915	852,575	856	802,627
Norfolk	58	51,728	140	137,106
Newport News				

1886.

New York	5,719	5,558,938	5,160	5,388,335
Boston	2,595	1,184,103	2,498	1,018,931
Philadelphia	1,848	1,155,066	1,013	895,466
Baltimore	541	1,521,470	626	607,868
Norfolk	63	56,488	158	145,092
Newport News	33	23,712	109	224,568

1896.

New York	4,378	6,911,783	4,065	6,552,614
Boston	2,194	1,757,291	2,183	1,523,066
Philadelphia	1,070	1,421,081	936	1,214,663
Baltimore	613	895,093	635	1,067,543
Norfolk	50	63,095	154	203,038
Newport News	39	159,719	373	607,965

The years 1882 and 1896 were selected by the complainant in its brief for comparison. Of all the years between 1882 and 1896 the tonnage at New York was the largest in 1882 and the smallest in 1886. These three years give a fair idea of the way in which the tonnage has averaged, and the entire statement need not be reproduced.

The intervenors upon the part of Baltimore and Philadelphia also introduced various tables showing the movement of the articles embraced in this proceeding from all ports upon the Atlantic coast as well as from these ports in controversy.

Table No. 11 shows the total export of wheat, corn and oats from the ports named for the years 1878 to 1896 inclusive and the percentage of the whole for each port and also for each commodity. It will be noticed that this table includes all the Atlantic and Gulf ports and also the port of Montreal.

The complainant claims that the exportation of oats for the year 1896 was abnormally large, and a very considerable part of the total export seems to have gone out through the port of New York, so that the percentage in favor of New York is considerably larger, if the three grains are considered, than it is if merely wheat and corn are taken into account. Considering only wheat and corn the percentage of New York for the year 1896 would be 22.7, while that for the other ports remains substantially the same. The differential, however, applies on oats as well as other grains, and we can see no reason why all grain should not be considered in the tabulation of these statistics.

Table No. 12 shows the exports of wheat, corn and oats from the Atlantic ports named for the years 1878 to 1896 inclusive, with the percentage from each of these ports. This is similar to Table No. 11, except that the ports of Montreal, New Orleans and Galveston are omitted.

TABLE No. 12.
EXPORTS OF WHEAT, CORN AND OATS FROM PORTS ON THE ATLANTIC COAST, IN BUSHELS, WITH PERCENTAGES FROM EACH PORT

	Portland.	Boston.	New York.	Philadelphia.	Baltimore.	Norfolk.	Newport News (Known as York- town previous to 1897.)	Totals.
1878. Total Exports	1,628,363	1,042,388	70,620,255	28,007,275	36,309,886	285,795	0.16	156,932,062
1879. Total Exports	963,891	11,067,454	94,898,291	30,853,800	62,024,536	240,670	0.12	190,638,057
1880. Total Exports	2,371,186	14,539,463	109,509,172	27,892,234	49,527,516	192,903	0.09	204,632,474
1881. Total Exports	1,398,283	11,108,635	65,920,262	14,991,694	31,551,062	272,266	0.22	125,112,222
1878 to 1881 Inc.	6,171,763	47,267,940	349,856,080	102,345,003	169,412,980	901,694	0.14	676,116,330
1882. Total Exports	813,590	5,017,813	43,924,086	6,061,550	18,365,876			74,917,744
1883. Total Exports	1,613,737	6,544,757	42,895,811	9,401,240	23,720,594	384,183	0.44	86,700,833
1884. Total Exports	1,533,761	5,796,081	39,256,496	7,310,425	21,160,610	300		72,599,023
1885. Total Exports	1,313,119	5,458,845	44,325,483	9,461,436	18,629,548	21,486	0.03	80,055,432
1886. Total Exports	1,372,437	5,401,971	53,067,315	7,936,499	23,613,624	53,021	0.06	95,065,715
1887. Total Exports	1,353,456	6,297,883	54,192,321	10,770,757	18,173,104	363,080	0.42	93,107,570
1888. Total Exports	176,100	4,456,456	20,845,423	1,809,215	7,824,422	82,674	0.19	41,943,799
1889. Total Exports	641,683	7,505,044	39,571,280	4,750,922	21,212,598	30,885	0.04	74,714,548
1890. Total Exports	388,589	5,541,898	46,470,479	17,365,984	24,897,650	38,728	0.04	97,876,922
1891. Total Exports	700,297	6,720,096	63,342,972	9,759,037	19,538,793	1,575,641	1.50	105,466,517
1892. Total Exports	1,010,545	10,547,596	73,342,008	29,988,948	36,447,180	1,226,769	0.75	137,518,137
1893. Total Exports	1,074,754	10,520,097	50,849,971	9,692,543	21,643,898	615,979	0.59	104,913,003
1894. Total Exports	1,019,539	9,638,813	36,681,010	7,063,205	16,220,593	1,228,062	1.55	79,292,263
1895. Total Exports	456,505	12,662,980	45,745,816	5,985,938	13,756,914	3,879,946	4.44	87,744,216
1882 to 1895 Inc.	13,481,022	102,290,940	692,978,378	137,079,699	297,169,374	9,831,084	0.76	1,250,919,210
1896. Total Exports	669,168	17,691,324	55,448,894	14,275,607	39,110,771	12,021,833	8.32	141,444,006
1882 to 1896 Inc.	14,120,210	110,291,554	710,427,272	151,255,104	329,277,445	22,454,914	1.56	1,406,172,059

Table No. 13 is a recapitulation of the average percentages for these different ports for the periods named:

TABLE No. 13.

RECAPITULATION.

PORTS.	SUMMARY OF PERCENTAGES		
	1878 to 1881 (inclusive)	1882 to 1895 (inclusive)	1882 to 1896 (inclusive)
Portland	0.91%	1.08%	1.01%
Boston	7.00%	8.18%	8.53%
New York	51.76%	53.00%	51.16%
Philadelphia	15.13%	10.95%	10.76%
Baltimore	25.05%	22.95%	23.20%
Norfolk .....	.15%	0.76%	1.59%
Newport News ...	.00%	3.08%	3.75%
	100.00%	100.00%	100.00%

Table No. 14 shows the exports of wheat, corn and oats from Boston, New York, Philadelphia and Baltimore from 1878 to 1896, inclusive, together with the percentages, in each case, of the total shipments from these four ports. Table No. 15 shows the value of all exports from Boston, New York, Philadelphia, Baltimore, Norfolk and Newport News for the years 1878 to 1896, together with the percentage of each port to the whole. These tables follow:

NEW YORK PRODUCE EXCHANGE V. BALTIMORE & O. R. CO. 645

Table No. 16 shows the total exports of provisions, including beef, canned, salted and fresh; bacon, hams, pork, lard, mutton ~~and tallow for the years 1890 to 1896 inclusive at the ports~~

1 years ending June 30th, 1878, to June 30, 1896, inclusive.

Per cent.	1885.		1886.		1887.	
	Dollars.	Per cent.	Dollars.	Per cent.	Dollars.	Per cent.
7.69	38,642,516	7.81	33,719,861	7.68	35,361,876	7.57
67.45	334,718,227	67.68	304,490,611	69.34	306,842,375	65.72
13.18	61,378,633	12.41	53,428,513	12.17	57,775,156	12.38
9.08	45,041,634	9.11	35,844,829	8.16	51,601,118	11.05
2.60	14,797,181	2.99	11,656,137	2.65	15,310,247	3.28
....

Per cent.	1895.		1896.	
	Dollars.	Per cent.	Dollars.	Per cent.
6.88	38,345,970	7.31	43,861,275	7.68
61.37	317,994,574	60.62	344,355,492	60.34
14.15	85,035,218	16.21	94,638,178	16.58
13.38	61,984,218	11.80	66,363,273	11.63
1.77	7,792,572	1.49	6,761,484	1.19
2.45	13,469,541	2.57	14,755,676	2.58

1896..... 21,500,000 ..
7 INTERS. COM. 42

NORFOLK.

1893.....	293,507 lbs.
1893.....	1,293,250 "
1894.....	116,800 "
1895.....	163,500 "
1896.....	187,800 "

Table No. 17 shows the exports of flour in barrels from Boston, New York, Philadelphia, and Baltimore for the years 1886 to 1896, inclusive:

TABLE No. 17.

YEAR.	BOSTON.	NEW YORK.	PHILADELPHIA.	BALTIMORE.
1886.	2,083,732	3,466,843	386 162	1,662,502
1887.	2,058,331	4,431,100	603,093	3,081,246
1888.	1,493 460	3,820 274	670 439	2,417,874
1889.	1,222,851	3,710,565	554,370	2,332,805
1890.	1,289,297	3,693,598	834,480	2,624 233
1891.	1,558,673	4,128,360	1,156 342	2,703,715
1892.	2,090,720	6,034,260	1,843 647	3,661,623
1893.	1,855,471	6,047,931	1,376 434	3,331,374
1894.	2,108,422	6,292,106	1,277,767	2,943,562
1895.	1,433,157	4,516,145	903,123	2,539 981
1896.	1,457,526	4,817,439	654,126	3,065,845

Table No. 18 gives the total value of imports of all kinds at Boston, New York, Philadelphia, Baltimore and Norfolk, for the years 1878 to 1896, inclusive, together with the percentages of the total for each port:

TABLE No. 18.

VALUE OF IMPORTS OF FOREIGN MERCHANDISE FOR FISCAL YEARS ENDING JUNE 30TH.

YEAR.	Baltimore.	P. C.	Boston.	P. C.	New York.	P. C.	Norfolk.*	Philadelphia.	P. C.	Total in Round Numbers.
1878	16,869,835	4.5	40,268,023	10.9	292,797,539	79.3	83,011	19,833,496	5.2	869,000,000
1879	14,017,604	3.7	40,448,791	10.6	392,319,033	79.3	83,814	24,877,271	6.4	881,000,000
1880	19,915,989	3.4	68,503,136	11.7	439,937,133	78.7	47,057	85,944,500	6.2	584,000,000
1881	16,189,816	3.0	61,960,103	11.3	435,450,904	79.8	113,688	82,583,106	5.9	546,000,000
1882	14,918,238	2.4	69,594,077	11.4	493,060,891	83.6	869,065	84,186,579	5.6	612,000,000
1883	14,699,179	2.3	72,551,075	11.8	496,005,276	84.4	186,355	83,798,556	5.5	617,000,000
1884	11,423,665	2.0	65,865,551	11.5	463,119,640	84.7	223,626	83,657,216	5.8	576,000,000
1885	11,849,696	2.5	53,445,939	11.2	380,077,749	80.0	130,214	29,919,019	6.3	475,000,000
1886	11,696,944	2.2	58,430,707	11.1	419,338,932	79.8	124,717	86,561,313	6.8	526,000,000
1887	12,555,920	2.2	61,018,330	10.7	456,694,631	80.0	19,936	39,052,349	7.0	570,000,000
1888	11,741,585	2.0	63,897,778	10.8	470,426,774	81.1	95,006	41,772,121	7.1	587,000,000
1889	15,233,844	2.5	66,711,023	11.1	472,153,507	78.4	180,640	48,528,602	8.0	602,817,616
1890	13,140,203	2.0	62,878,666	9.8	516,426,693	79.9	89,042	53,836,315	7.3	616,408,919
1891	20,553,687	3.0	71,212,614	10.3	537,786,007	78.1	76,173	59,427,890	8.6	689,057,370
1892	13,418,523	2.0	71,780,489	10.5	536,538,112	78.7	44,485	60,006,791	8.8	631,788,350
1893	16,150,946	2.3	79,357,654	11.2	548,558,593	77.2	40,153	66,122,147	9.3	710,229,493
1894	11,978,900	2.3	50,309,331	9.5	415,795,991	78.2	104,997	53,729,963	10.6	531,916,183
1895	12,260,706	2.0	66,889,118	11.0	477,741,128	78.8	268,350	49,037,037	8.2	606,196,319
1896	13,476,636	2.1	79,179,864	12.3	499,932,792	78.6	219,350	44,001,500	7.0	636,810,156

* Norfolk imports were less than 1 per cent.

We have caused to be compiled from the government records the following table, marked No. 19, showing the total value of all imports and exports through the Atlantic and Gulf ports for the years 1895, 1896, and 1897, together with the percentage of each port to the entire group for the year 1897, and also the percentage of each port to the total imports and exports of the United States for the same year:

TABLE No. 19.

IMPORTS.

PORTS.	1895.	1896.	1897.	P. Ct. Total.	P. Ct. Group.
Boston	\$66,889,118	\$79,179,864	\$90,178,419	11.80	13.39
New York	477,741,128	499,932,792	480,603,580	62.85	74.06
Philadelphia	48,802,676	43,840,836	48,072,672	6.29	7.41
Baltimore	12,260,706	13,476,630	11,371,193	1.49	1.75
Norfolk	268,330	219,350	121,858	.02	.02
Newport News	1,032,849	1,131,628	1,169,315	.15	.18
New Orleans	13,861,507	13,471,142	16,618,727	2.17	2.57
Galveston	369,575	602,770	779,101	.10	.12
Total			\$648,914,865	84.87	100.00

EXPORTS.

Boston	\$85,505,196	\$95,851,004	\$100,857,281	9.60	12.22
New York	325,580,062	354,274,941	391,679,907	37.27	47.43
Philadelphia	35,043,093	39,567,376	47,305,273	4.51	5.72
Baltimore	61,938,991	66,398,905	85,692,651	8.15	10.37
Norfolk	7,792,572	6,761,484	18,581,532	1.77	2.25
Newport News	13,469,541	14,850,117	22,109,575	2.10	2.68
New Orleans	68,413,362	80,986,791	101,494,120	9.66	12.29
Galveston	41,886,651	36,397,091	58,198,174	5.54	7.04
Total			\$825,918,513	78.60	100.00

The complainant contends that an inspection of all these statistics shows that since 1882 the export business in grain and provisions has been gradually leaving the port of New York and that this is especially marked in the year 1896. In explanation of this last named fact, it further contends that during most of the time the differentials, while existing nominally, have not in reality been maintained, but that beginning with 1896, they were rigorously maintained and that for that reason the result in 1896

is a fair test of what the differentials will do, and conclusively demonstrates their unfairness.

Several witnesses were introduced who testified that rates generally were not maintained, and that probably means that the differentials were not maintained. For the purpose of showing, however, that they were maintained in 1896, the complainants introduced George R. Blanchard, commissioner of the Joint Traffic Association, who testified, in substance, that after the taking effect of the Joint Traffic Association agreement, on the 1st of January, 1896, rates were better maintained than they had been at any time for a long period except for something like a year or a year and a half after the Act to Regulate Commerce went into effect, which was April 1, 1887. Mr. Blanchard did not profess to say that at the time of the giving of his testimony, about March 16, 1897, rates were being maintained, nor did he distinctly state how long they had been maintained, nor the extent to which they had been maintained, but simply gave his impression in general that they were better observed in 1896 than at any other period, except a year or thereabouts immediately following the enactment of the Interstate Commerce Law.

There is no testimony in this case, and we have no information from which we can form even a reasonable conjecture as to the extent to which these differentials have been on the whole ignored from 1882 down. It seems to be tacitly admitted that they have been to some extent, some witnesses thought to a great extent. The testimony upon this subject was only fragmentary. It applied to no definite time and it gave no definite figures. It was simply an impression. There was, however, testimony in the case which tended to show that during the year 1896 and in the early part of the year 1897 these rates were not maintained. Witnesses testified that corn F. O. B. the vessel could be and had been bought at Baltimore and Philadelphia for between 3 and 4 cents a bushel less than it could be bought for in New York. Other witnesses testified that at times corn could be purchased F. O. B. New York cheaper than it could be at the outports. The differential is 2 cents per hundred in favor of Philadelphia and 3 cents in favor of Baltimore. This would, roughly speaking, amount to 1 cent a bushel on corn to Philadelphia and $1\frac{1}{4}$ cents a bushel to Baltimore. The differential, therefore, would not

account for the difference in price between those ports and New York, nor would anything else account for it, except the fact that a better freight rate was obtained to those ports for the time being. The fact that export dealers, having houses in Chicago where they could buy the corn and pay their own transportation charges and where in past years they had to a very considerable extent transacted this business, did not during the year 1896 buy corn there at all, because they found it cheaper to buy it upon the seaboard, indicates that the rate charged was not the open and published rate, but that the persons of whom they purchased corn at the seaboard enjoyed certain advantages in the way of transportation facilities which they did not enjoy. The Joint Traffic Association was formed for the purpose among others, of maintaining the published rates, and the members of that association undoubtedly entered upon the execution of that agreement with the resolution that rates should be maintained. That, together with the machinery of the association, undoubtedly resulted in the better maintenance of rates for a time, but for how long a time it is altogether impossible to say from any testimony before us. There is nothing in this case upon which any finding of value as to the maintenance of rates at one time and their non-maintenance at another time can be based, and we cannot undertake to make any finding of that sort.

The testimony upon the part of Baltimore tended to show that the Baltimore & Ohio Railroad during the years 1893, 1894 and 1895, and possibly some preceding years, was so crippled financially that it was in no position to compete actively with other lines for this business, but that in 1896, owing to large expenditures by the receivers, it did become able to enter such active competition. The probability would seem to be that these different lines leading from the west to the seaboard have felt themselves entitled to about a certain part of this business. When they have been able to obtain that at the tariff rate the tariff rate has been maintained. When, in order to obtain the business, it has been necessary to reduce the tariff rate, it has been reduced. When the Baltimore & Ohio Railroad was in shape to do the business it got the business to do, and every other line in the same way.

The complainant alleged that New York enjoyed certain

advantages which entitled it to the larger share of this export business. The intervenors insisted that the port of New York labored under certain disadvantages. Some of these relative advantages and disadvantages have been referred to. New York has the largest and most accessible harbor, but, upon the other hand, its port charges are heavy. Its advantages arising from the great accumulation of wealth and concentration of business at that point need not be referred to here. They are matters of common notoriety, and the extent to which New York enjoys those advantages abundantly appears from the tables hereinbefore given. There are certain elements which may be peculiar to the handling of grain and which perhaps ought to be especially referred to.

The first of these is the elevator storage capacity.

That of the four ports is, in bushels, about as follows:

New York.....	80,075,000
Boston.....	4,550,000
Philadelphia.....	3,925,000
Baltimore.....	5,350,000

Practically all the storage capacity at Boston, Philadelphia and Baltimore is owned by the railroad companies, while at New York private companies own 24,075,000 bushels. This great storage capacity in and around New York enables the carrying by private parties for immediate delivery of very considerable stocks of grain, and the testimony showed that grain, especially wheat, was so carried to a very considerable extent. New York, as already said, has a grain market of its own, and it is possible to buy there at almost any time for immediate delivery. The great storage capacity at New York also permits the bringing of grain during the canal season and the storing of it against the time when it must be brought in upon the higher all-rail rates.

The canal gives New York another advantage to the benefit of which it strenuously insisted it was entitled. It is well known that grain can be brought *via* the Great Lakes and the Erie Canal to New York by water, and that the cost of transportation by this means has heretofore been ordinarily considerably less than by rail. The comparative water and rail rates from 1878 to 1896, inclusive, appear in the following tables. The first of these, No. 20, states the rates per bushel by lake from Chicago to Buffalo

and by canal from Buffalo to New York on wheat and corn. The second, No. 21, gives a combination of these two rates, showing the total rate per bushel by water from Chicago to New York. This last rate is exclusive of elevator charges. The third table, No. 22, gives the average rail rate for the same period from Chicago to New York by the bushel, while No. 23 states the same rates by the hundred pounds.

TABLE No. 20.

SEASON AVERAGES OF LAKE AND CANAL FREIGHTS FROM 1878
TO 1896, INCLUSIVE.

	CHICAGO TO BUFFALO. LAKE.		BUFFALO TO NEW YORK. CANAL.	
	Wheat, 60 lbs. Cents.	Corn, 56 lbs. Cents.	Wheat, 60 lbs. Cents.	Corn, 56 lbs. Cents.
Season 1878	3.07	2.85	6.08	5.46
" 1879	4.74	4.27	6.86	6.17
" 1880	5.76	5.34	6.51	5.80
" 1881	3.44	2.97	4.75	4.30
" 1882	2.50	2.29	5.39	4.94
" 1883	3.41	3.10	4.96	4.56
" 1884	2.18	1.94	4.13	3.70
" 1885	2.02	1.83	3.85	3.55
" 1886	3.63	3.42	5.03	4.56
" 1887	4.13	3.82	4.38	4.06
" 1888	2.56	2.32	3.37	3.09
" 1889	2.51	2.26	4.38	3.93
" 1890	1.96	1.69	3.89	3.41
" 1891	2.38	2.20	3.58	3.16
" 1892	2.19	1.94	3.42	3.09
" 1893	1.66	1.45	4.65	4.26
" 1894	1.27	1.13	3.17	2.86
" 1895	1.92	1.76	2.19	1.95
" 1896	1.58	1.42	3.71	3.51

TABLE No. 21.

SEASON AVERAGES OF LAKE AND CANAL FREIGHTS FROM 1878
TO 1896, INCLUSIVE.

	CHICAGO TO NEW YORK, VIA BUFFALO.	
	Wheat, 60 lbs., Centa.	Corn, 56 lbs., Centa.
Season 1878	9.15	8.31
" 1879	11.60	10.44
" 1880	12.27	11.14
" 1881	8.19	7.26
" 1882	7.89	7.23
" 1883	8.37	7.66
" 1884	6.31	5.64
" 1885	5.87	5.38
" 1886	8.71	7.98
" 1887	8.51	7.88
" 1888	5.93	5.41
" 1889	6.89	6.19
" 1890	5.85	5.10
" 1891	5.96	5.86
" 1892	5.61	5.03
" 1893	6.32	5.72
" 1894	4.44	3.99
" 1895	4.11	3.71
" 1896	5.29	4.98

TABLE No. 22.

Statement showing the average rail rate on wheat and corn
from 1878 to 1896, inclusive. Rates in cents per bushel.

Year.	FROM CHICAGO TO NEW YORK VIA ALL RAIL.	
	Wheat.	Corn.
1878	17.62	16.44
1879	17.36	16.20
1880	19.65	18.34
1881	15.02	12.84
1882	14.66	12.85
1883	16.18	15.10
1884	13.57	12.67
1885	12.89	12.03
1886	15.09	14.08
1887	15.67	14.68
1888	14.71	13.73
1889	14.85	12.69
1890	14.39	11.35
1891	15.	14.
1892	14.09	13.15
1893	14.74	13.75
1894	12.88	11.56
1895	12.17	11.36
1896	11.11	10.87

TABLE No. 23.

Statement showing the average rail rate on wheat and corn from 1878 to 1896, inclusive. Rates in cents per hundred pounds.

Year.	FROM CHICAGO TO NEW YORK VIA ALL RAIL.	
	Wheat.	Corn.
1878.....	29.36	29.36
1879.....	28.93	28.93
1880.....	32.75	32.75
1881.....	25.08	22.92
1882.....	24.43	22.95
1883.....	26.96	26.96
1884.....	22.62	22.62
1885.....	21.43	21.43
1886.....	25.15	25.15
1887.....	26.12	26.12
1888.....	24.52	24.52
1889.....	24.75	22.66
1890.....	23.99	20.26
1891.....	25.	25.
1892.....	23.49	23.49
1893.....	24.56	24.56
1894.....	20.64	20.64
1895.....	20.29	20.29
1896.....	18.52	18.52

In connection with the subject of the canal and canal rates, it is proper to notice the testimony of Mr. Depuy, the owner of a fleet of canal boats, who asked leave to appear before the Commission in this matter.

Mr. Depuy stated that the elevator charges at Buffalo and at New York were a most serious handicap to the transportation of grain by canal, and that these charges were to a very considerable extent illegal and excessive.

The statute of New York fixes $\frac{1}{2}$ of a cent per bushel as the charge for elevating grain in that State. It is not possible, however, to obtain the transfer of grain at Buffalo from a lake vessel to a canal boat for that price. In addition to the $\frac{1}{2}$ of a cent a charge of $\frac{1}{4}$ of a cent for storage and \$1.65 per thousand bushels for trimming is made. These amount upon a hundred thousand bushels to \$415. The legal charge for rendering that service, according to the claim of Mr. Depuy, would be \$625, while the actual charge for transferring 100,000 bushels from the vessel to the canal boat is \$1,040.

At New York, the grain is sometimes stored in private ware-

houses and sometimes placed directly upon the vessel. If stored not to exceed ten days in a private warehouse, and from thence taken and put into the vessel, the cost per 100,000 bushels, according to Mr. Depuy, is \$1,812.50. If it goes directly from the canal boat into the vessel the cost for the 100,000 bushels is \$1,250, which is the charge made by the floating elevator for transferring the grain from the canal boat to the vessel. Of this charge Mr. Depuy says that \$625 is legal and the balance illegal. The floating elevator charges $\frac{1}{4}$ of a cent for elevating, $\frac{1}{8}$ of a cent for trimming and $\frac{1}{8}$ cent per bushel for moving the elevator from place to place, making in all a charge of $1\frac{1}{4}$ cents per bushel as against the statutory charge of $\frac{1}{4}$ of a cent per bushel.

The terminal charges, therefore, necessarily incurred in taking 100,000 bushels of grain from the vessel at Buffalo and putting it upon the vessel at New York are \$2,290, of which Mr. Depuy says \$1,010 are illegal.

He further insisted that the railroad companies themselves owned the elevators at Buffalo and made from their operation by transferring canal grain at this price a very large sum, insisting that the actual cost of elevating grain did not exceed $\frac{1}{16}$ of a cent per bushel, and that the statutory charge of $\frac{1}{4}$ of a cent per bushel was $2\frac{1}{2}$ times what the elevators had previously charged in open competition before the elevator trust at that place was formed.

We should hardly base any finding of fact upon this testimony, nor does the subject seem to be very material to the disposition of this case. We refer to it as an item of some importance in determining possibly why the canal brings less grain to New York now than in former years. The average rate of transportation by canal from Buffalo to New York in the year 1895 was about 2 cents a bushel, so that the terminal charges upon 100,000 bushels during that season must have considerably exceeded the total freight money.

It was contended by the intervenors that the system of grain inspection at New York worked to the disadvantage of that port. It appeared that grain which graded No. 2 at Chicago would take the same grade at Boston, Philadelphia or Baltimore, while at New York it might grade as "Steamer," that being the next

lower quality. The principal difference between Steamer Corn and No. 2 seemed to be that the former was somewhat damper than the latter. The elevators at the port of New York in the process of elevating subject the corn to a blowing operation by which it is dried, cooled and to some extent relieved of foreign substances. It appeared to be admitted that corn which graded in as Steamer after being subjected to this process almost invariably graded out for export as No. 2. It did not appear exactly what the difference in price between No. 2 and Steamer was. It seemed to be generally understood that Steamer Corn at New York was available for export as No. 2, after being treated in this manner, and the price may very likely have been affected by that understanding. At times there was a difference of 2 or 3 cents a bushel. At times there was practically no difference, and the rule seems to have been that the difference was slight—not usually exceeding 1 cent or $1\frac{1}{2}$ cents a bushel.

Whether this worked to the disadvantage of New York did not clearly appear. It did seem that it was generally understood that the inspection at New York was more rigid upon inward grain than at other ports, so that the seller in the West did not always obtain at that port the grade to which he conceived himself entitled, and this operated to render New York unpopular as a market. Upon the contrary, if the merchants at New York can pay for Steamer Corn and export the same corn as No. 2, that must be a considerable advantage to them.

CONCLUSIONS.

The questions presented by this record upon the foregoing facts are of very considerable importance. The differentials in case of every locality except Boston apply not merely upon freight intended for export, but upon all traffic forwarded to these points. In order to abolish the differentials it would be necessary either to raise the Baltimore and Philadelphia rates, or to reduce the New York rate. If the New York rate were to be reduced it would amount, upon all the traffic to which that differential applies, to the loss of nearly \$1,000,000 per year. If the Baltimore rate were to be raised to the basis of the New York rate, that would add about the same amount to the revenues of the lines serving localities south of New York, and in each case this

would mean an addition to or a subtraction from the net revenues of the companies. This is upon the assumption that the volume of traffic continues the same; but the purpose of a differential is to influence the flow of traffic and the abolishing of these might divert to the New York lines such quantities of freight as to seriously deplete the revenues of the southern lines. It is, therefore, from the standpoint of the carriers, a most delicate matter to attempt to modify these differentials, and this is sufficiently shown by the fierce contests which resulted in the adoption of those now in force.

Upon its part the complainant insists that some relief of the kind asked for is of vital consequence to New York. In 1882 something more than 50 per cent of all the wheat, corn and oats exported through the Atlantic and Gulf ports went out from the port of New York, while in 1896 this per cent had fallen to a little more than 25, and the decline from 1895 to 1896 was shown to be more than three fourths of the total shrinkage. Now, the complainant says that while New York may for a single year, or for two or three years, continue to hold its import trade, notwithstanding the loss of its exports, eventually imports will flow in through the same ports from which exports go out, and that if the larger part of grain exports are diverted by these differentials from New York, the result will eventually be the loss to that city of a corresponding amount of its foreign trade, so that this condition of things becomes a most serious menace to the commerce of that port.

Philadelphia and Baltimore, upon the other hand, strenuously insist that to abolish these differentials would take from them the little foreign trade which they are now enabled to obtain.

It should be noticed in the outset exactly what the relation of the Commission is to the questions presented. It seems to have been more or less assumed upon the hearing and discussion of this matter that the Commission was vested with authority to revise the action of the defendants in the making of these differentials, and that the same considerations would address themselves to us in passing upon their correctness that the defendants ought to have considered in putting them in force. This is entirely wrong. Our function is not that of the Advisory Commission of 1882. We are not discharging the duties of arbitrators selected to determine

between the different carriers upon the fairness of these differentials. Our only jurisdiction is to inquire whether the Act to Regulate Commerce has been violated. That law does not seek to interfere with the business operations of carriers subject to its provisions until those operations contravene the provisions of the Act itself.

Take the situation presented by this case. Here is a vast amount of freight to be transported from the West to the Atlantic seaboard, and here are these various lines of railway so situated that they can participate in that transportation. Now, considering this as a business proposition from the standpoint of the carrier, we have nothing whatever to do with it. The railways may make whatever rates, form whatever lines, establish whatever differentials they may deem best for the purpose of securing and conducting that transportation. Whether in so doing they act wisely or unwisely, fairly or unfairly between themselves, we do not inquire. Our only inquiry is, does the situation which the carriers have created violate the Act to Regulate Commerce. That this is the extent of our authority is now settled by the decisions of the United States Supreme Court. *Interstate Commerce Commission v. Baltimore & Ohio R. Co.* 145 U. S. 263, 36 L. ed. 699, 4 Inters. Com. Rep. 92; *Texas & P. R. Co. v. Interstate Commerce Commission*, 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405; *Interstate Commerce Commission v. Cincinnati, N. O. & T. P. R. Co.* 167 U. S. 479, 42 L. ed. 243; *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 42 L. ed. 414.

The question before us for consideration is, therefore, whether these differentials are in violation of the Interstate Commerce Act. The complainant alleges that they are in contravention of the third section of that Act, for the reason that they discriminate against the locality of New York and in favor of the localities of Baltimore and Philadelphia. It should be noticed in this connection, upon the authority of the cases above cited, that it is not sufficient to show the fact of such a discrimination. Railway companies are not prohibited by the third section from preferring one locality to another unless that preference amounts to an undue or unreasonable one. This phase of the law does not seem to have been much dwelt upon in the argument, but it

is important that it should be fully appreciated. It is insisted that these differentials give an undue preference for the reason that they are without excuse or justification. If the assumption of fact embraced in this statement is true, the conclusion probably follows. A preference without legitimate excuse would be in and of itself an undue and unreasonable one. It is therefore proper to consider at the very outset upon what alleged pretext the defendants have instituted these differentials.

A good deal has been said in various parts of the case about differences in distance and differences in cost of service, and these alleged advantages in favor of Baltimore and Philadelphia have been earnestly relied upon by the representatives of those localities in justification of the preference which they receive. An examination of the whole case plainly shows, however, that while these elements may have to some extent entered into the determination of the question by the defendant carriers, the controlling purpose of the differentials is to distribute between rival railway lines the export traffic which moves from the west to the Atlantic seaboard. Very large quantities of grain and provisions are exported from the United States to foreign countries. This traffic originates in the west and the defendant lines are so situated that they can carry it to the ports of export. If it passes over one line it is exported through the port of New York; if it passes over another line it is exported through the port of Baltimore. Now, the primary purpose of these differentials is, not to do justice to a particular port, nor to recognize the advantages of a particular port, but to enable the various competing lines to obtain a fair proportion of this traffic. In other words, the reason for these differentials is competition between railways. Cost of service and distance are very likely taken into account by the defendants in determining whether under the operation of the differentials a particular line has obtained more than its share of the traffic, but the underlying principle is competition. Upon no other theory could Boston, which is 88 miles farther from Chicago than New York, be given the same rate with New York, while Norfolk, which is 72 miles farther from Chicago than New York, has a rate of 3 cents per hundred pounds less.

Do these competitive conditions justify the preference of one locality to another? It is clear under the recent decisions of the

United States Supreme Court, not that they necessarily do, but that they may. It was held in the Import Rate Case, *Interstate Commerce Commission v. Texas & P. R. Co.* 162 U. S. 197, 40 L. ed. 940, 5 Inters. Com. Rep. 405, that competition *might* justify a railway line between New Orleans and San Francisco in carrying merchandise as a part of a through shipment from Liverpool to San Francisco at a rate which yielded to that company for its division less than one-third of what it received for carrying the same kind of merchandise from New Orleans to San Francisco. In the Troy Case, *Interstate Commerce Commission v. Alabama Midland R. Co.* 168 U. S. 144, 42 L. ed. 414, it was determined that railway competition did justify the defendant in making a lower rate to a more distant point. Railway competition may, therefore, excuse the giving of a preference to a particular locality or a particular commodity, provided the interests of the public are not unduly sacrificed to those of the carrier.

In the light of these cases it is difficult to see why it is not perfectly legitimate for carriers to make differentials like those in question. The Baltimore & Ohio Railroad extends from Chicago to Baltimore. It comes into competition with the lines running to New York for this export grain traffic. There are many kinds of traffic in which other facilities, like expedition, are of more importance than the mere question of rates, but in the case of this traffic where a change of $\frac{1}{8}$ cent a bushel in the cost determines through which port it shall be exported, the rate is practically the only medium of competition, and the only way by which the Baltimore & Ohio Company can secure a share of this traffic is by making a rate in competition with the rate to New York which will secure it. If a lower rate is necessary it may make that lower rate, and it might make it even though the distance from Chicago to Baltimore was greater than the distance from Chicago to New York, and even though the cost of transporting that grain to Baltimore was greater than the cost of transporting it to New York.

We think, therefore, that the principle upon which these differentials are made is legitimate, but it does not by any means follow that the differentials themselves are legitimate. A given preference may be justifiable under some circumstances, and not under others; to some extent, and not to a greater extent. Grant-

ing that a discrimination against a locality is excusable in theory, the question still remains whether under the third section it is undue or unreasonable, and that question is one of fact in each individual case. Upon the whole situation, is the preference justifiable? This seems to be the rule of the cases above referred to.

Evidently in applying this rule to a particular case the just interest of the carrier should be considered. Carriers are allowed to prefer one locality to another under stress of competition in some instances, for the reason that the interest of the carrier requires it; but every preference is to a degree a hardship upon the community against which it is enforced, and that hardship should be, in a way, set over against the interest of the carrier. In this connection, what the Supreme Court of the United States, in *United States v. Trans-Missouri Freight Assn.* 166 U. S. 290, 41 L. ed. 1007, said of the relation of the railways to the public, "that they all primarily owe duties to the public of a higher nature even than that of earning large dividends for their shareholders," must be borne in mind. Still it is plain that the interest of the carrier is an important factor to be considered, and that in order to justly estimate a given case it is necessary to know how the carrier as well as the public stands affected by the preference.

In this case we have no information from the carriers' standpoint. The defendants appeared at the opening hearing, but gradually withdrew from participation in the proceedings until finally the contest became one between the three ports, New York, Philadelphia and Baltimore. We only know that the defendants have established and are maintaining these differentials, and we assume that they are satisfactory to them, and that any disturbance of them would be against their wish and against their interest. This is, perhaps, equivalent to saying that the complainant assumes the burden of establishing the fact that there is an undue preference.

The complainant alleges that an examination of the basis upon which these differentials are constructed and the history of the differentials themselves shows them to be manifestly unfair to the port of New York for the reason, first, that the pretended difference in cost of ocean freights from the various ports does

not exist, and, secondly, that, assuming the differentials to have been fair when they were first agreed upon in 1877, the changed conditions render them grossly unfair at the present time. We will examine briefly these claims.

The rates complained of are at the present time recognized and maintained by most of the defendants through the medium of the Joint Traffic Association. Mr. George R. Blanchard, the commissioner of that association, stated in his testimony before the Commission the theory upon which these differentials were fixed. As we understand his testimony upon that point, it was this: A considerable part of the grain in question is actually shipped from the city of Chicago. Almost all of it is purchased upon the basis of the Chicago market price. Chicago may therefore be treated as the point of origin. The largest foreign market is Liverpool, and that, for the purpose of illustration, may be treated as the point of destination. Now, the object of these differentials is to make the cost of transporting this grain from Chicago to Liverpool the same through all these ports. Perhaps, more accurately speaking, Mr. Blanchard testified that the purpose of the differential was to equalize the advantages of transportation through these several ports, but inasmuch as in the exportation of grain, cost is the principal element, it comes to substantially the same thing.

Now, if the purpose of the differential is to make the cost of exporting through the different ports the same, it is evident that in case the cost of carriage from the various domestic ports to the foreign port is the same, then the cost of placing the grain on shipboard at the domestic ports should also be the same, but that any difference in the expense of ocean carriage should be equalized by a corresponding difference in the cost of inland carriage. Assuming that the cost of ocean carriage from Baltimore to Liverpool is 3 cents per hundred more than from New York, then the inland rail rate from Chicago to Baltimore must be 3 cents per hundred less, so that the total rate may be the same. This Mr. Blanchard says, is the theory upon which the differentials are determined. There are certain minor considerations, but, broadly speaking, the differential is supposed to correspond with and make good a difference in the ocean freight rate. In order to determine whether the present differentials are consistent

with that theory it is only necessary to inquire whether the existing difference in ocean rates corresponds to the established differential.

It will be seen by referring to the findings of fact that grain is carried either in full cargo shipments or at berth rates. It will be further seen that the full cargo rate is the same from each one of these three ports. There are certain minor differences in favor of New York and certain minor differences in favor of Baltimore and Philadelphia; but taken altogether, we are satisfied that practically there is no difference in the expense of the ocean carriage of grain in full cargo lots from New York, Philadelphia and Baltimore.

With berth rate business this is different, and New York enjoys very important advantages over either Baltimore or Philadelphia. In the first place the lines of steamship from that port reach more grain markets than can be reached from either Baltimore or Philadelphia. Then, the lines to all the principle grain markets are much more numerous and the sailings very much more frequent. All this gives the port of New York, in berth rate business of all kinds, a great advantage over either of her competitors in this proceeding, and we have found that this difference amounts to about 2 cents per hundred pounds as to both Baltimore and Philadelphia. From this alone it would follow—assuming this to be the only question involved in the establishment of the differential—that there ought to be no differential upon full cargo business, and that the present differential is substantially right as to berth rate business. But there is no way in which full cargo grain can be distinguished in the matter of the freight rate from berth rate grain, and it is necessary to find some figure which will properly adjust the two. The articles involved in this proceeding are provisions, grain and flour. Provisions and flour are entirely shipped upon the berth rate. Wheat, except in exceptional cases, is exported by berth rate. Corn more frequently goes by full cargo shipments. An idea of the relative amount of grain shipped by berth rate and full cargo can be obtained from tables 4 and 5.

The berth rate is very much less stable than the full cargo rate and, as a rule, lower than the full cargo rate. As a result, little or no full cargo business can be done until the berth space has been

exhausted. As was well said by counsel for one of the intervenors, a full cargo business is only possible when the berth business has come to the point of saturation. It follows, therefore, that in years when grain exports are light the full cargo business is small, while in years when exports are heavy that business is larger; and from this it further follows, inasmuch as the full cargo business can be done more advantageously at Baltimore and Philadelphia than at New York, that in years of large grain exports Philadelphia and Baltimore ought to obtain much more of this export traffic than they do in years when the total amount of exports is small. This rule is not an invariable one, however, since other traffic conditions may make the supply of berth space larger in years of large exports than in years of small exports.

It should be observed further that any finding of fact as to the relative berth rates from these three ports for any one year or for any succession of years, especially for a series of years in the past, must be extremely unsatisfactory. The rate which is quoted and the rate paid for actual engagements are not by any means the same, so that it cannot be stated within the limits of perhaps a cent per hundred what the relative berth rates from New York, Philadelphia and Baltimore are.

It will be seen, therefore, that any attempt to determine exactly the relative cost of ocean carriage from New York, Philadelphia and Baltimore of the commodities embraced in this proceeding is, for the reasons above stated impossible. It is possible to give the relative cost in the case of full cargo shipments. It is possible to give, within reasonable limits, the relative berth rates; but to combine the two and to say what will for a series of years be the difference in the cost of carrying flour, grain and provisions, and to make that the basis of a differential which will be strictly fair, is out of the question.

Assuming that the differential is intended solely to equalize the difference in ocean rates, we should be of the impression that there is no ground for a different differential at Baltimore than at Philadelphia, for we do not find that the cost of ocean carriage from those ports differs materially, and we should be of the further impression that the present Philadelphia differential just about equaled the difference in berth rates and would be some-

what too high as applied to both berth and cargo business. It should be observed, however, that New York enjoys certain advantages in reference to its berth business in addition to the mere difference in rate. Many ports can be reached in this way from New York which are not accessible at all from the outports. The sailings from New York are much more frequent than from the outports, so that it is possible to deliver small quantities of grain more frequently from that port than from the outports and to sell in many localities which cannot be reached from the outports at all. Just what the measure of advantage to New York in the fraction of a cent per hundred pounds on all the grain exported is, cannot be even intelligently surmised.

Taking this whole situation together, we do not think it could be fairly determined in advance what differential would be required to offset the advantages of New York over its rivals in the matter of ocean facilities. About all that can be done is to determine within probable limits what that differential should be and then decide from an observance of the actual operation of the differential whether its effect is a fair one.

These differentials were established in 1877, and re-established, and approved by the Advisory Commission, in 1882. The complainants insist that assuming them to have been perfectly fair upon either of the above mentioned dates, they have, owing to changed conditions, become grossly unfair at the present time.

Since the differentials are arbitrary, the rates differ by so many cents no matter what the New York rate may be. An examination of table No. 22 shows that in 1878, that being the year after the present differentials were fixed upon, the rate on corn from Chicago to New York was about 30 cents per hundred pounds. This would make the Baltimore rate 27 cents, or 90 per cent of the New York rate. In 1882 the New York rate had fallen to 23 cents; and the Baltimore rate would be 20 cents, or about 87 per cent of the New York rate. In 1896 the New York rate was 18.5, and the Baltimore rate 15.5, or 84 per cent of the New York rate. In other words, the gradual lowering of rates since these differentials were established has operated to make the Baltimore and Philadelphia rates relatively less in comparison with the New York rate than they were in 1878 or 1882. If the purpose be to establish a fixed relation between these rates and that relation was correct then, it is **wrong now**.

So, too, in the matter of ocean rates. It seems to be pretty well established that the agreement of April 5, 1877, fixed the differentials at the present figure for the purpose of equalizing the difference in the cost of ocean transportation. The Advisory Commission in 1882 found a difference in the cost of such transportation which approximately equaled the amount of the differentials. The testimony before us shows that this difference in the cost of ocean transportation has been gradually growing less since 1882. While no change has taken place in reference to full cargo shipments, the difference in berth rates in favor of New York is less now than it was then, so that if the differential is to be determined upon that basis it would seem that, if right then, it is wrong now.

Again, a given differential has more effect now than when these were fixed. The price of grain in 1882 was more than in 1896. Corn sold in 1882 upon the Chicago market for about 62 cents as against 25 cents in 1896. It appeared in testimony that at the present time a difference in the total expense of exporting corn of $\frac{1}{8}$ cent a bushel was sufficient to divert it from one port to the other, but it was said that in 1882 this would not have been so, since competition in this business had increased and the margin upon which the business was done had grown smaller so that $\frac{1}{8}$ cent a bushel had become a more important factor.

We think this contention of the complainant is well taken. The gradual lowering of rates, the shrinking of values, the increase of competition, have all operated to make the differentials in favor of Baltimore and Philadelphia mean more to-day than they did when agreed upon. A difference of 3 cents per hundred pounds was more effective in drawing export grain traffic through Baltimore in 1896 than in 1882. Just how far this makes out that the present differential is unduly preferential against New York will be considered farther on.

The intervenors earnestly insist that the preference granted to Baltimore and Philadelphia is justified by the fact that those localities are nearer the point from which this traffic originates, and that the expense of rendering the service covered by the transportation rate to Philadelphia and Baltimore is less than at New York. For the purpose of determining to what benefit, if any,

these localities are entitled upon the score of distance, the short line to each port must be considered.

In this case the short line from Chicago to New York, Philadelphia and Baltimore is in all cases by the Pennsylvania Railroad, and is 912 miles to New York, 822 miles to Philadelphia and 802 miles to Baltimore. The distance from Chicago to Baltimore is 88 per cent of the distance to New York, and that, when these differentials were first adopted in 1877, was almost exactly the percentage which the Baltimore rate was of the New York rate. At the present time the Baltimore rate on corn is about 84 per cent of the New York rate.

The complainant says that distance should not be considered as a justification for these differentials because it is habitually disregarded by the defendants and it instances the rates which are made by the defendants in this very case. Thus, the distance to Boston is 1,000 miles while the rate for export is the same as that to New York. Newport News is 94 miles farther from Chicago than is Baltimore, but it takes the Baltimore rate. Norfolk, Va., is 72 miles farther from Chicago than is New York, but it takes a rate 3 cents lower than New York. Now, the complainant says, since these defendants have disregarded the element of distance in the making of these very rates complained of they cannot be allowed to set it up as a justification in the case of a particular one of these rates.

Distance is frequently disregarded by carriers in the making of their rates. The Commission has held that it may be under some circumstances properly disregarded to some extent. It has been repeatedly said, however, that distance ought, when possible, to be regarded, and we have never held that a carrier would be compelled to disregard it for the purpose of putting two communities upon a commercial equality.

Commercial Club of Omaha v. Chicago, R. I. & P. R. Co. 6 Inters. Com. Rep. 647; *Freight Bureau of Cincinnati Chamber of Commerce v. Cincinnati, N. O. & T. P. R. Co.* 7 Inters. Com. Rep. 180.

It must be remembered that carriers are allowed a certain latitude in this respect. They may within certain limits regard or disregard distance, as their interest demands. If the Pennsylvania Railroad Company, by reason of competitive conditions saw

fit to make the same rate to New York and Philadelphia, it is possible that Philadelphia could not insist that such a disregard of distance was unduly preferential, but it is clear to us that if the Pennsylvania Company elects to make a lower rate from Chicago to Philadelphia than to New York, it may show in justification of that rate that traffic for New York must be hauled through and 90 miles beyond Philadelphia. We also think that when New York asserts that the differential in favor of Philadelphia unduly prefers that locality, Philadelphia may reply that its advantage of distance entitles it to a lower rate.

Distance is recognized as an element in determining the amount of a rate upon the assumption that it corresponds in a degree with the cost of service. It does not, however, necessarily follow that the greater cost of service necessarily goes with the greater distance. It is certain that the expense of transporting grain from Chicago to New York by the Pennsylvania lines is more than from Chicago to Philadelphia, for, by those lines, the transportation is through Philadelphia; but it is quite possible that it might cost less to transport grain from Chicago to New York *via* the New York Central than to Philadelphia, even, by the Pennsylvania. Nothing of that has been gone into in this case, and we are left to assume that the cost of transportation is measured by the distance, for as a general rule, in the absence of exceptional conditions, the greater the distance the greater that cost.

One subject has, however, been considerably discussed both in the testimony and in the argument which bears upon the cost of service, and that is the terminal charges and service at the various ports. It will be seen by referring to the findings of fact that the carrier at Baltimore or Philadelphia ordinarily receives $1\frac{1}{4}$ cents per bushel in addition to the rate for performing a somewhat less service than is performed at New York for the rate. The carrier to New York for putting the grain upon a barge and towing it to the side of the vessel receives the rate, whatever it may be, while the carrier to Baltimore or Philadelphia for a service equivalent to putting the grain upon the barge, without the added expense of lighterage, receives the rate and in addition $1\frac{1}{4}$ cents per bushel. This $1\frac{1}{4}$ cents amounts to more than the differential at Philadelphia, and, if the cost of lighterage be

added, to nearly the differential at Baltimore. Apparently this has the same bearing upon the questions involved as has the element of distance.

The defendants do not justify these differentials upon the ground either of distance or cost of service. We do not express an opinion that they could be justified to their full extent upon either of these grounds. They certainly could not in the case of Norfolk and Newport News. But we do think that in this inquiry between the three localities, New York, Philadelphia and Baltimore, in determining whether there is an undue preference, the advantage which Philadelphia and Baltimore possess in the way of distance should be considered, and that the same is true of the additional expense of delivery at New York.

The Advisory Commission of 1882 was apparently of the opinion that the most satisfactory test of these differentials was the result of their operation. Such must be the opinion of anyone who gives the matter careful attention. The problem is so complex, the factors which enter into it are so numerous and so impossible of exact estimation, that it is difficult of solution by any *a priori* process. Actual observation of the effect of these preferences is the best if not the only means of determining their fairness or unfairness. Complainant unhesitatingly accepts this test and asserts that from this phase of the case more plainly than anywhere else does the justice of its contention appear. Indeed it was the very marked falling off in exportations of grain through the port of New York which alarmed the complainant and led to the prosecution of this proceeding. It is to this aspect of the case that the testimony has been largely addressed upon both sides.

In 1882, about 65 per cent of all the exports from the United States exported through the Atlantic and Gulf ports passed through the port of New York. The same year 80 per cent of all the imports into the United States by way of these same ports came in at the port of New York. It will be seen, therefore, that during that year, being the year when the Advisory Commission pronounced upon the reasonableness of these differentials, New York practically engrossed the foreign trade of this country. A preliminary question is how far is the port of New York "entitled," or how far can that port expect to continue, to enjoy that commercial supremacy.

Plainly not to the same extent. It would be in accordance neither with the theory of our institutions nor with the history of the development of our nation to permit any one port upon our vast extent of seacoast to monopolize the trade with foreign nations.

Within recent years the United States government has expended in improving navigation to and at the port of Philadelphia about \$9,500,000; at Baltimore \$3,600,000; at Galveston \$8,500,000; and at New Orleans, or upon the Mississippi River, of which New Orleans takes the benefit, about \$8,000,000. These vast sums have not been appropriated and expended certainly upon the theory that it was desirable for the foreign trade of this country to flow through the port of New York alone. Rather does this recognize it as the policy of our government that its foreign commerce should be distributed between various ports.

Such is also the inevitable tendency of the development of our country. Hitherto that development has gone on in such a way that New York has been enabled to seize more of our export and import trade than would naturally belong to it. The lines of transportation leading to New York and the pecuniary interests concentrated at that point have been so strong as to divert both export and import traffic to that port which might naturally go to some other port. These same influences will unquestionably continue to have the same effect in the future, but not to the same extent. Other strong influences are beginning to operate in favor of other ports.

The distance from Chicago to New York is about the same as to New Orleans, and the water communication between Chicago and New York will, during certain seasons of the year at least, give New York an advantage as to traffic which fairly originates at Chicago. But a glance at the map of the United States shows that the grain-producing territory, much of it, lies between New Orleans upon the south and Chicago upon the north, and is most of it nearer New Orleans than New York. When this export corn moves to Chicago it moves away from New Orleans, or at least not towards it; and the same thing is true of much of the export wheat. The distance from Kansas City and St. Louis to New Orleans is less than two thirds that to New York. The Mississippi River and its tributaries give access to all this region.

A year ago the Commission inspected the terminal and harbor facilities at New Orleans. Its docks are already extensive and are capable of almost unlimited extension. There is no place in the United States, with possibly one exception, where grain can be transferred from the car to the vessel more cheaply than here. The grade from the grain fields to these elevators is an easy one. The corporations which operate the lines of railway leading to them are strong and aggressive. They will undoubtedly demand a larger portion of that traffic which is tributary to them, and will gradually acquire more and more of it, and this in its turn will bring to New Orleans a certain amount of those importations which now reach New York. The same thing is and will be true of Galveston and other ports. New York cannot expect, therefore, to occupy the same relative position of supremacy with reference to our foreign commerce in the future that it has in the past.

This is indicated by actual results up to the present time. In 1882, of all wheat, corn and oats exported through Atlantic or Gulf ports, 51.1 per cent passed through New York and 5.8 per cent through the ports of New Orleans, Norfolk, Newport News and Galveston; while in 1896, 26.9 per cent passed through New York, and 31.3 per cent through the four ports above named. From one half the whole, New York has fallen to one quarter, and from practically nothing, these four ports have risen to about one third.

It would, however, be unfair to the position of the complainant to state that it was insisting in this proceeding upon the right of New York, as against the whole country, to retain the proportion of the export grain traffic which that port has formerly done. In 1896 of the grain and flour exported through the six Atlantic ports, Norfolk had 7.5 per cent and Newport News 10 per cent. Until 1890 practically nothing had gone through these ports. Export business is done through them now because lines of transportation have been opened up and strengthened from the West to these points and extensive terminal facilities provided. Now it does not seem to be the contention of the complainant that a portion of the export grain ought not to pass over these lines and through these ports; nor is there any claim that these two ports should not be allowed the same differential, if any, as Baltimore. The com-

plainant insists that each port is entitled to what it can fairly obtain, and that these differentials give to the southern ports an unfair advantage. The evidence of that is not that Norfolk and Newport News, owing to recently provided facilities, have increased their grain exportations, but that Boston, Philadelphia and Baltimore have, under the operation of these differentials and without the assistance of any new advantageous conditions, gained as against New York. In other words, the complainant says that the fair test of these differentials is their actual working as observed at these four ports where the conditions have remained the same, and it is to these ports that they direct attention.

For the purpose of comparison the complainant has selected the years 1882, 1895 and 1896. The alleged reason for this is that 1882 was the year of the Advisory Commission when the present differentials were approved, and 1895 and 1896 the last two years next preceding this investigation.

The last half of Table No. 6 gives the percentages of exports of wheat, corn and flour, from New York, Boston, Philadelphia, Baltimore, Norfolk and Newport News for the years 1873 to 1896, inclusive. Those percentages for the years in question are as follows:—

	1882.	1895.	1896.
Boston	9.6	13.1	12.7
New York	61.5	47.6	33.7
Philadelphia	7.5	7.	9.5
Baltimore	20.7	19.8	26.6

The complainant says that a comparison of 1882 with 1896 shows, roughly speaking, that New York has lost one half its export business, that Boston has gained one third, Philadelphia one fourth, and Baltimore one fourth. While that is the showing which results from a comparison of these two years, it is not a fair deduction from the table itself. In the first place 1882 is, of all the years since 1875, that year in which the percentage of New York was the largest, that year in which the percentage of Philadelphia was smaller than it had been for eight years before, and smaller than it was again for five years to follow; the percentage of Baltimore smaller than it had been for six years preceding,

and smaller than it ever has been since, except in the year 1895, when it was a trifle lower.

Excluding from our consideration the year 1896, we observe that the percentage of New York in 1895 was larger than it had been in 1894, 1892 or 1890, and but 12 per cent below the average from 1873 to 1896; that the percentage of Philadelphia in 1895 was smaller than it had been in any year since 1875, except the years 1888 and 1889, and 36 per cent below the average; that the percentage of Baltimore for that year was smaller than it had been since 1875 and about 13 per cent below the average. The percentage of Boston was more than it had ever been except in the years 1888 and 1884, and about 42 per cent above the average.

If, therefore, this case had been tried in the spring of 1896 instead of 1897, the tables being brought down to the close of 1895, instead of to the close of 1896, it would hardly be claimed that those tables disclosed any undue diversion of traffic from New York to either Philadelphia or Baltimore. Baltimore could have with truth asserted that its percentage for that year was smaller than it had ever been before and more below the average for the last twenty years than that of New York, while Philadelphia might well have said that its percentage for 1895 was less than one half what it had been in 1878 and 36 per cent below the average for the last twenty years. Boston alone would have been the gainer, but Boston has never enjoyed a differential.

But a comparison of the the year 1896 with 1895, or indeed with almost any previous year, makes an entirely different showing, and the complainant insists that in this proceeding the results for the year 1896 are entitled to more consequence than those of any one or indeed all the previous years.

Its position apparently is that while these differentials nominally existed from 1877 down to January 1, 1896, they never were actually maintained until the latter date. Of course, the mere existence of these differentials, if they were not in fact collected, could have no effect to divert traffic one way or the other, and if we were satisfied that there had been no differentials in effect down to January 1, 1896 and that these differentials had gone into effect on that date and had since that time been rigorously enforced with the result upon the export traffic of these various

ports which that year apparently exhibits, it would certainly present a strong case for the complainant.

We are not, however, as indicated by the findings of fact, satisfied that this is true. The testimony of the complainant conclusively shows that rates were not maintained in the year 1896. From that testimony it appears that grain could be purchased at Philadelphia and Baltimore at times for more than 3 cents per bushel below the price at New York, while at other times the price would be practically the same or occasionally in favor of New York. Now, the price of grain is determined by the Chicago market, and the price in these various ports is obtained by adding to that price the freight rate. The Baltimore differential is less than $1\frac{1}{2}$ cents per bushel. It follows, therefore, almost of necessity that these fluctuations indicate manipulations in the rate. When corn is worth the same price in Baltimore and New York the presumption is that the differential is not maintained, and when corn is worth 3 cents a bushel less in Baltimore than in New York the presumption is that a greater difference than the differential has been made. In support of its proposition the complainant relies mainly upon testimony of Mr. Blanchard, the commissioner of the Joint Traffic Association. Mr. Blanchard testified that he had been familiar with freight rates since before 1878 and that in his opinion those in question were better maintained beginning January 1, 1896, when the Joint Traffic Agreement went into effect, than they had been at any previous period except for the year or year and a half following the enactment of the Act to Regulate Commerce. This Act went into effect April 1, 1887, and if we were to give Mr. Blanchard's testimony its full effect it would still remain that rates were as well maintained in 1887 and the first part of 1888 as they were during the year 1896. This being so, and no reason being suggested to the contrary, it is fair to assume that the maintenance of the differential would have produced the same effect in 1887 and the year following that it did in 1896. We should expect to find, therefore, the same remarkable falling off at New York and the same increase at Baltimore and Philadelphia. But upon turning to complainant's Table No. 6 we find that the percentage of New York in 1887 was 53.9, an actual increase over the preceding year, and just about the average from 1873 to 1896 inclusive; that the percent-

age of Philadelphia was 10 per cent, an increase over the previous year but below the average; while that of Baltimore was 23.3 per cent, a falling off as to the previous year. During the year 1888, while the salutary effect of the Interstate Commerce Law may be presumed to have still lingered, we find that New York had further increased its percentage to 54.2, while Philadelphia had fallen to 6.2, the lowest in her history, and Baltimore had risen to 24.5. The effect of enforcing the differential in 1887 and 1888 was apparently to raise rather than to lower the percentage of New York. We see no reason for giving the year 1896 any greater prominence than is given to every other year.

For the purpose of comparing the four ports Table No. 14 is perhaps the best. That does not include exportations of flour, but it has been already observed that flour and provisions are exported entirely by berth rate and an examination of the tables covering those articles shows that New York has little if anything to gain by an investigation into the movement of these commodities. From the nature of the case the differential produces the most effect in the movement of grain. This table, therefore, which embraces only wheat, corn and oats, is as favorable to New York as any can be. The years covered are 1878 to 1896, inclusive, so that the movement of these articles is exhibited over substantially the whole period during which the present differentials have been in operation.

An examination of this table shows in the first place that the percentages of these four cities vary from year to year, and that this variation, so far as can be observed, does not obey any rule or law. It might be thought, inasmuch as the differential operates especially in the case of full cargoes, and as full cargo shipments are more numerous when exports are large, that the percentage of New York and Boston would decline and the percentages of Philadelphia and Baltimore would rise in those years when the total exports were the largest, and this may be to some extent the case; but it appears that in 1890 and 1891 the total volume of exports through these four ports was almost identical while the difference in the percentage between New York, Philadelphia and Baltimore was nearly as great as in any other two years down to 1896. A study of these fluctuations emphasizes what has already been said in the findings of fact, namely, that

the conditions governing the price of ocean freights and the movement of this grain are so complex that it is impossible to predict from the knowledge of any one factor, like the quantity of the exports, what channel they will take.

It is apparent in the second place that it is altogether unsatisfactory to compare any single year with any other year and that any deduction from such a comparison is almost certain to be misleading.

Suppose the port of Philadelphia in 1888 had complained that the differentials in its favor were not sufficient and had cited in illustration the fact that its exports had fallen from 12.04 the previous year to 4.42 per cent that year, and that the exports from New York had risen from 60.59 to 65.58 per cent its case would have been almost as strong as that made by the complainant, and yet in the year 1890 the percentage of New York had fallen to 49.31, while that of Philadelphia had risen to 18.42, and that of Baltimore to 26.38. In 1891 New York had again risen to 63.75 while Philadelphia had fallen to 9.82 and Baltimore to 19.65; and in 1892 New York had once more fallen to 48.79, while Philadelphia had risen to 19.95 and Baltimore to 24.24.

A comparison of averages is somewhat more satisfactory. Table No. 13 embraces the ports of Portland, Norfolk and Newport News in addition to the four under consideration, and states the percentage of each to the group for the period of 1878 to 1881 inclusive, and from 1882 to 1896 inclusive. By reference to this it will be seen that the percentage of New York for the first period was 51.76 and for the last period 51.16; of Philadelphia for the first period 15.13 and for the last period 10.76; of Baltimore for the first period 25.05 and for the last period 23.20. These averages do not indicate any falling off in the case of New York and do indicate a very large falling off in the case of Philadelphia and a slight decrease in the case of Baltimore.

None of these tables are absolutely correct, nor are they in all cases quite consistent with one another. It is also possible to marshal these figures in such a way as to point to radically different conclusions. Generally speaking, however, the tables do agree in their main features, and the trend of all these statistics is to the same conclusion. Taking the whole period together from 1878 down to the end of the year 1896, it is pretty apparent that

of these four ports as compared with one another Boston has been a decided gainer, Baltimore has made a small gain, while New York and Philadelphia have both lost, and as between these two, Philadelphia has been the greater loser. Compared with the entire group New York has lost.

If, instead of considering the entire period, we were to take the year 1896 alone, the result would be entirely different, but it has been already said that no special prominence can be given to that year over any other year, certainly not over the years 1887 and 1888. One very great embarrassment in disposing of this case arises from the feeling that these rates have not been maintained, and that there is no reliable indication in actual practice of what the effect of the differentials would be if strictly enforced. This is no reason why we should not alter the differential if it was found to be wrong, for we must assume that the published rate is collected, but when the effect of the differential is relied upon to show the wrong, and it is claimed that the differential has been enforced in a particular year and has not been enforced in other years, that fact must be clearly established.

The results of the year 1896 show a very unusual percentage in favor of Baltimore and a large increase in favor of Philadelphia, and it is our impression that these two ports will perhaps obtain in the future rather more than their average for the last twenty years. But this impression is based not upon any deduction from these tables but upon the further impression that the lines leading to Baltimore are in a position to demand more of this traffic than they have obtained at least in recent years, and that the port of Philadelphia will not, when the improvements in the Delaware River give it deep water to the ocean, and perhaps ought not to rest content with the small amount of foreign trade which it has enjoyed in the past. If these ports gain, it must be largely at the expense of New York.

Now, upon the whole situation, does the complainant make out a case? Can it be said that these differentials unduly discriminate against the locality of New York? We have stated it as our impression that the difference in ocean freight rates at the present time was something less than the amount of these differentials, and that the gradual change of conditions since 1877 makes the differentials of more effect to-day than when they were instituted.

These two circumstances would point strongly to the conclusion that they ought to be modified. There is, however, one other circumstance that should be noticed in this connection.

These differentials apply upon all classes of freight and accordingly upon all commodities. In the very nature of the case they cannot be abstractly just, but only fair in the aggregate result. Their purpose is to give to each line its fair share of export business. Many other commodities are exported besides those embraced in this proceeding. In case of grain the freight rate is a very large factor in its value, while in case of other exports it may be insignificant. A differential which determines the route by which grain shall be exported would have no effect whatever upon some other article. These higher grade exports go almost entirely to the port of New York, from which they find quicker service to all parts of the world, and from which they can only find communication with many parts of the world. Now, if the quantity of these exports, which the differential does not divert to Baltimore or Philadelphia, has been increased in late years, it is manifest that this offsets to that extent any increased diversion of grain to the outports. The freight rate which these other exports pay is higher, and it is therefore more for the interest of the carrier to transport them. The ocean rate is also higher, and the advantages to the port of New York in the way of attracting shipping are probably greater than arise from the exportation of grain. So it is by no means certain that more grain ought not to go through the outports to offset the increased exports of other kinds from New York.

That this may be so is indicated by Table No. 9, which gives the total quantity of traffic forwarded by all lines to these four localities for the years 1888 to 1896 inclusive. From this it appears that during these eight years the total number of tons had increased 42 per cent in the case of Baltimore, 97 per cent in the case of Boston, 63 per cent in the case of New York, and but 2 per cent in the case of Philadelphia. These figures include both domestic and foreign traffic and are not therefore of great significance as bearing upon this question, but they show that traffic over the lines leading to New York has, during the last eight years, increased more in proportion than that over those leading to Baltimore and Philadelphia.

Table No. 15 perhaps bears more directly upon this suggestion. This table gives the percentages of the value of all exports from Boston, New York, Philadelphia, Baltimore, Norfolk and Newport News from 1878 to 1896 inclusive. From this it appears that New York exported in 1878, 69.26 per cent as against 60.34 in 1896; Philadelphia 9.42 as against 7.68; and Baltimore 9.63 as against 11.63; it further appears that the percentage of New York in 1892 was but 59.97 while in 1896 it was 60.34. From this it seems that New York exported in 1896 almost the same proportion in value that it did in 1878, and that its percentage that year notwithstanding the very great falling off in grain exportations, was more than it had been in at least one previous year and substantially the same as it had been since 1890.

It seems to be true that New York is in a measure losing its export grain business. But does it follow upon the testimony in this case that this is due to the operation of these differentials?

It must be borne in mind that the grain of New York does not reach that port from the interior exclusively by rail. The canal has brought in the past a very considerable portion of that traffic, and it is to this water communication between the West and the East that New York has largely owed its predominance in the foreign trade. Now, these differentials have nothing to do with grain moving by canal. Their purpose is merely to divide fairly between the different competing lines the export business which moves by rail. If for any reason the canal were to be entirely shut up so that no grain could be transported by it, it would by no means follow that all the grain which had formerly come to New York by canal ought now to come there by rail. Quite the contrary. This canal traffic ought now to be distributed in the same proportions over the various lines leading to the different ports. New York has no vested right in the having of so much grain shipped to that port. The canal has been a most important element in her commercial supremacy. If that element drops out, she must expect to lose that portion of her supremacy which was due to it.

The first half of complainant's table No. 6 shows the percentage of all wheat, corn and flour in bushels transported to the six ports in question, from the year 1873 to the year 1896, inclusive; and with reference to New York these percentages are stated

both by rail and by canal. Thus, in 1877, when we were agreed upon, the rail carriers transported 32.5 per cent and the canal 26.5 per cent of the entire traffic to the ports, and for the whole series of years from 1877 to 1896 averaged 32.4 per cent and the canal 19.6 per cent. In 1896 the rail lines carried 30.3 per cent and the canal 19.6 per cent, that is, of the great falling off at New York in canal carriage. If the canal had transported the same percentage that it did in 1877 the grain to New York would have been relatively larger than it is now, and if it had transported even the same percentage it would have shown no remarkable falling off.

As already suggested, these differentials are due to the rail lines a proper distribution of this traffic. Under their operation in 1895 those lines carried 32.5 per cent of all the traffic to these six ports, and in 1891, which was the year of the canal's greatest supremacy, they carried 30.3 per cent. Can it be said, therefore, that their operation has been unfairly affected, which they properly affect, has been unfairly affected by the great supremacy of New York in the past, due to its canal. If it would hold that supremacy, it must give attention to that same waterway. Captain Depuy as to excessive elevator charges is not material to this investigation, but it is material in connection with the facts above referred to. To be restored to-day to the same position that it has occupied in the twenty years past, the port of New York could not suffer.

The Baltimore differential presents the same question. To every practical intent the cost of ocean freight from Baltimore is no greater than from Philadelphia; Philadelphia afforded other advantages in the transaction of this export business. What is the distinction between those two ports?

The representatives of Baltimore strenuously maintain the proximity of that port to the corn area was of the greater advantage in the way of distribution of this business. An examination of the facts shows that in recent years at least the percentage of

Baltimore has been larger than of wheat. The great advantage of Baltimore in 1896 rested in the very great increase of corn shipments. It is a significant fact that the distance differentials which were in force for a short time in 1877 seem to have been unsatisfactory to the New York lines, not because the difference in the percentage of the distances from Chicago gave to Baltimore too great an advantage, but because the distances from other points were in favor of that city. The differential which Baltimore obtained upon the Chicago rate by the distance differential was almost exactly what was obtained under the arbitrary differential, but when the distance differential was applied to all points from which traffic originated, Baltimore seems to have profited to such an extent thereby that this system only remained in force for a very few months. This would indicate that possibly the traffic does originate at points relatively nearer Baltimore than is Chicago. How far this fact may be recognized in the present system by which rates from western points are based upon a percentage of the New York-Chicago rate, does not appear.

The testimony tended to show that the corn exported at Baltimore did not come from Chicago, but was intercepted before it reached that market. If, in point of fact, Baltimore is in closer proximity to the corn fields from which these exports come, and if the lines leading to that port have secured recognition of that fact in these differentials, we certainly should not disturb them, for they are a recognition of an advantage in location to which Baltimore is fairly entitled.

No claim is made as between Baltimore and Philadelphia, that the present relation should be disturbed. As between those two cities and New York, it might not be altogether easy to say whether, on the case presented, the Philadelphia differential should be raised or the Baltimore differential lowered. It might be that in justice to the city of Philadelphia we ought to make that differential more rather than the Baltimore differential less.

It must be remembered, moreover, that to the solution of this question no absolute standard can be applied. In recognizing competitive conditions of this kind the carrier has a certain latitude within which this Commission cannot interfere. It is only when that limit is exceeded and when the action of the carrier becomes undue that we can act. In the last utterance of

the United States Supreme Court on the *Commerce Commission v. Alabama Middle* 144, 42 L. ed. 414, it was held that the A way might charge a higher rate to Montgo point, than it charged to Troy, the nearer p the ground that Montgomery was a railway competitive forces at that point might making of rates. Suppose now that the A way Company had elected to charge the and to Troy, could the locality of Montgo a proceeding before this Commission, t entitled to a better rate than Troy? Clear carrier will or will not meet those competit what extent rests primarily with it, and its is not subject to review by this tribunal so reasonable. Whether it is due or reasonabl ter of judicial investigation and determinati and the courts.

While there is much in the case to induc sion, and while we have arrived at this co deal of hesitation, we do not think that, up the carriers have exceeded the limit within to determine for themselves. The princip differentials have been established is legitin basis of the differentials themselves, while t cate that they should, perhaps, be somewh be affirmed with certainty that they are their effect as exhibited through a long impossible to say that they have exercised natural influence upon traffic. We do not they should be disturbed by us.

The Act to Regulate Commerce does not tion, nor interfere with the natural flow of One cardinal object of that Act was to secu competition among the carriers themselves. competition becomes tyrannical, so to spea petitive struggle localities, commodities, ind of being crushed that the law steps in. In things it can seldom happen that the power

has occasion to invoke the law for protection against its weaker rivals. The lines which extend to the port of New York are numerous, powerful, and aggressive. It is difficult to believe that those lines will ever suffer any great or permanent injury to the commerce of that port, when in permitting that they must submit to a depletion of their own revenues. It might happen that some combination of these lines, for the purpose of promoting their interests at some other point, would sacrifice the port of New York, or that for the purpose of promoting their interests as to some other kind of traffic they would sacrifice this particular traffic. If anything of that sort were apparent, if there seemed to be anything arbitrary, anything unreasonable, any undue preference against this locality or this species of traffic, it would be our duty to correct it. But there is nothing of that kind and we can do no better than to leave this matter where competition has left it.

In coming to this conclusion we have perhaps been somewhat influenced by the fact that the consequence of an error in this direction is not as serious as one in the other direction might be. The pecuniary importance of these differentials to the carriers interested has already been suggested. Their importance in the distribution of traffic may be even greater. If it were possible to abolish them altogether and absolutely enforce the same rate to all these ports, it might so deplete the revenues of lines to southerly ports as to render practically valueless the outlay of enormous sums spent in their development. Upon the other hand, if we wrongfully refuse to interfere, it simply follows that foreign trade which ought to pass through New York is diverted to some rival port. This, considering the manner in which this export grain business is conducted, does not mean the breaking down or the building up of any industry. It destroys no capital invested, it renders no dock and no ship useless. At the most, it simply determines where some new dock shall be built. If this were a question of an unreasonable rate, where the thing complained of was the exaction of more than a just compensation by the carrier, where whatever the carrier gained unjustly was necessarily paid by the public, the consequences of an error would be more evenly balanced.

Again, if we have made an error, it is in favor of the weak and

against the strong. New York may have lost somewhat in the matter of its foreign commerce, but it is still immeasurably in advance of all rivals. As appears from Table No. 19, which is brought down to January 1, 1898, in the year 1897 New York had 47.43 per cent of all the exports moving out through the Atlantic and Gulf ports of the United States and 74.06 per cent of the total imports moving in through those same ports. It is almost impossible for us to feel that a locality which engrosses one half of all the exports and three fourths of all the imports upon the Atlantic seaboard can justly complain of any undue diversion of its commerce. The population of Greater New York is said to be about 3,000,000; the population of Philadelphia, distant less than 100 miles, is 1,200,000. In 1897 the imports of Philadelphia were about one tenth and the exports about one eighth of those at New York. Can it be said that Philadelphia is unduly preferred to New York in respect to this foreign trade?

Nothing has been said in the disposition of this case touching the ex-lake differentials as such. These apply, it will be remembered, to traffic originating in the West, brought by water to various points upon the southern shore of Lake Erie or corresponding points and from thence transported by rail to the ports in question. The complainant insists that whatever may be said of the all-rail differentials these are absolutely indefensible since the distances to Baltimore, Philadelphia and New York are practically the same.

If the justification for the all-rail differentials were found in differences of distance, that would be true. It appears, however, that while distance is an element which may be taken into account in inquiring whether those differentials are undue and unreasonable, it is not the ground upon which they are made. This ex-lake traffic originates at the same points with the all-rail traffic and is, therefore, properly regarded as competitive. Looking to the differential itself, we find that no distinction is made between Baltimore and Philadelphia, thus removing what seemed to be the most serious objection to the all-rail differentials. We also find that the amount in one hundred pounds is but 1 cent against New York. There are in force commodity rates on grain by the bushel which, when translated into rates by the hundred

pounds, amount to about $1\frac{1}{2}$ cents per hundred pounds against New York, upon wheat, corn and oats. This probably does not exceed the difference in cost of ocean carriage. If, therefore, our decision in reference to the all-rail differentials is correct, it seems to follow all the more that the ex-lake differentials should not be disturbed by us.

Neither have we considered the legality or propriety of the Joint Traffic Association, for the reason that those questions are not involved in this proceeding. If that association is in violation of some other statute of the United States, we have nothing to do with it. If it is in violation of the fifth section of the Act to Regulate Commerce, as a pooling arrangement, then we might upon proper proceedings order the carriers to cease and desist from further maintaining it. Such is not directly nor indirectly the scope of this proceeding. The existence and methods of that association could only become relevant in this case with a view to finding and enforcing a remedy if one was called for. Since we have found no infraction of law, no remedy need be sought, and all questions in regard to that association become immaterial.

In arriving at these conclusions the year 1896 has been treated the same as previous years covered by the investigation. If the diversion of export grain from the port of New York, which is shown to have taken place in that year, should continue in subsequent years, and it should appear with reasonable certainty that the published rates had been maintained to all the ports, the actual effect of these differentials upon the movement of grain could be determined with confidence and a different question would be presented, which might merit further consideration, and of which the disposition of the present case would not be controlling.

The complaint is dismissed without prejudice.

1. The first part of the document is a list of names and dates, which appears to be a record of some kind. The names are written in a cursive script, and the dates are in a more formal, printed style. The list is organized into two columns, with names on the left and dates on the right. The names are: John Smith, James Brown, William Jones, and Thomas White. The dates are: 1810, 1811, 1812, and 1813. The list is followed by a signature, which appears to be "John Smith".

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1. The Interstate Commerce Commission will dismiss without order a complaint of discriminating rates where, since the hearing, the control of the road has been changed and the cause of complaint removed so that the statute is substantially complied with. *Boyer v. Chesapeake, O. & S. W. R. Co.* 55.

2. The Interstate Commerce Commission dismissed an investigation before it as to freight rates charged during a rate war, where such war had been discontinued and the prior rates restored. *Re Tariffs & Classifications of Pa. R. Co.* 177.

3. A defendant carrier is not entitled to have a complaint before the Interstate Commerce Commission dismissed as to it because of the absence of direct damage to the complainant. *Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co.* 92.

4. Complaint against discrimination in rates will be dismissed without prejudice by the Interstate Commerce Commission, notwithstanding substantial satisfaction of the complaint, where it appears that less charges are accepted upon the road of the defendants west of the Mississippi river on shipments originating at other points than from the complaining point. *Freeman v. Atchison, T. & S. F. R. Co.* 202.

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What subject to regulation by, see CARRIERS.

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1. The Interstate Commerce Commission is not authorized to fix a reduced or lower rate of charges which the carriers can be required to respect in the future, even if the ascertained facts warrant a finding as to the extent of the reduction which should be made. *Montell v. Baltimore & O. R. Co.* 412.

2. The Interstate Commerce Commission may determine in respect to the past what was reasonable and just, but as to rates found to be unreasonable, unjust, and unlawful can make no provision or order for their reduction which the courts are required to enforce or the carrier obliged to obey, except to notify the carrier to cease and desist from violation of the statute. *Cary v. Eureka Springs R. Co.* 286.

3. The Interstate Commerce Commission cannot correct wrongs caused by improperly adjusted rates over independent lines from connecting cities to a common destination, as it is without authority to prescribe a maximum and minimum rate. *Savannah Bureau of F. & T. v. Charleston & S. R. Co.* 458.

4. The Interstate Commerce Commission cannot inquire whether railroad companies act wisely or unwisely, fairly or unfairly, between themselves in making rates, forming lines, and establishing differentials; but its inquiry is limited to the question whether the situation created by the companies violates the Act to Regulate Commerce. *New York Produce Exch. v. Baltimore & O. R. Co.* 612.

5. Although railroad companies which carry grain to only one of two competing cities may, by a reduction of the rates charged by them, prevent the correction of an unjust relation of rates in favor of such city, it is the duty of the Interstate Commerce Commission to condemn the existing relation of rates if it believes it to be unjust, and indicate the basis on which the rate should be readjusted. *Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co.* 481.

6. The Interstate Commerce Commission has no jurisdiction to grant relief under a complaint alleging that freight rates between points on connecting lines, representing the aggregate of a joint rate of some of the carriers and the

local rate of another, are unreasonable, unjust, and unlawful, where the joint rate, though incidentally attacked in the complaint, is not referred to in the testimony, and no joint through rates including the latter's line have been published or filed, and the defendants either deny or do not admit that the shipment is continuous, and no proof is submitted that they may make a through route in fact by their course of business, as the Commission has no power to compel a through route. *Gustin v. Illinois C. R. Co.* 376.

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For passengers; in interstate traffic. *Savannah Bureau of Freight v. Charleston & S. R. Co.* 601.

MILK.

Rates on. *Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co.* 92.

MILL.

Demand for spur track to. *Mt. Vernon Milling Co. v. Chicago, M. & St. P. R. Co.* 194.

MODIFICATION.

Of tariff. *Paine Bros. & Co. v. Lehigh Valley R. Co.* 218.

MOLASSES.

Rates on. *Calloway v. Louisville & N. R. Co.* 431.

NOTICE. See **SCHEDULES OR TARIFFS**.

OPTION.

Of becoming a common carrier. *Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co.* 513.

ORDER.

General, to all carriers. *American Warehousemen's Asso. v. Illinois Cent. R. Co.* 556.

To desist from unlawful practices. *Alleged Unlawful Rates and Practices*, 39.

As to group rates, suspension of. *Rea v. Mobile & O. R. Co.* 43.

PAPER BAGS.

Classification of, for rates. *Wolf Bros. v. Allegheny Valley R. Co.* 40.

PARTIES.

Bringing in. *Boyer & Co. v. Chesapeake, O. & S. W. R. Co.* 55.

Joining railroad companies as defendants. *Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co.* 92.

Who may complain of rates before Commission. *American Warehousemen's Asso. v. Illinois Cent. R. Co.* 556.

1. A corporation whose object is to promote the marketing of live stock at Chicago in the interest of its members may, under the Act to Regulate Commerce, § 13, maintain a proceeding to correct an unreasonable freight rate on live stock shipped to Chicago, as its members, for whose general benefit and protection it was formed, have a vital interest in such a proceeding. *Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co.* 513.

2. That the members of a corporation organized to promote the marketing of live stock at a given city are violating the anti-trust law will not prevent the corporation from maintaining a proceeding to correct an unreasonable freight rate on live stock shipped to such city. *Id.*

3. A milk producers' association, whether representing its own members, or specially authorized to represent other shippers, or assuming in addition to represent shippers engaged in the same industry, may bring and maintain a proceeding before the Interstate Commerce Commission affecting rates on milk supplied for a common market, against all engaged in carrying for that market. *Milk Producers' Protective Assn. v. Delaware, L. & W. R. Co.* 92.

PASSENGERS.

Free transportation of shippers or dealers. *Milk Producers' Protective Assn. v. Delaware, L. & W. R. Co.* 92.

Reasonableness of fare of. *Willson v. Rock Creek R. Co.* 83.

Savannah Bureau of Freight v. Charleston & S. R. Co. 601.

Rates for, per mile. *Board of Railroad & Warehouse Comrs. v. Eureka Springs R. Co.* 69.

Discrimination between. *Willson v. Rock Creek R. Co.* 83.

PASSES.

The free transportation of shippers or dealers between state or interstate points on account of interstate freight traffic furnished to the carrier is unlawful. *Milk Producers' Protective Assn. v. Delaware, L. & W. R. Co.* 92.

PENALTY.

On excess weight. *Suffern, H. & Co. v. Indiana, D. & W. R. Co.* 255.

PLACES. Discrimination between, see heading, *Discrimination between Places*, under title RATES.

POSTING. See also SCHEDULES OR TARIFFS.

Of notices in station. *Rea v. Mobile & O. R. Co.* 43.

POTATOES.

Rates on. *Freeman v. Atchison, T. & S. F. R. Co.* 202.

Discrimination against shipper of. *Rea v. Mobile & O. R. Co.* 43.

PRACTICE. See ACTION OR SUIT; DISMISSAL; INTERSTATE COMMERCE COMMISSION; PARTIES.

PREFERENCE.

When undue or unreasonable, see RATES.

PREJUDICE.

To locality in matter of rates, see RATES.

Dismissal of complaint without. *Freeman v. Atchison, T. & S. F. R. Co.* 202.

Commercial Club of Omaha v. Chicago & N. W. R. Co. 386.

Willson v. Rock Creek R. Co. 83.

PROFIT.

On purchase as rate of transportation. *Alleged Unlawful Rates and Practices* 33.

PROVISIONS.

Rates on. *New York Produce Exch. v. Baltimore & O. R. Co.* 612.

PUBLICATION.

Of tariff, see SCHEDULES OR TARIFFS.

RAILROADS. See CARRIERS; RATES; SPUR TRACK.

RATES.

Power of Commission to establish or determine, see **INTERSTATE COMMERCE COMMISSION.**

Correction of, see **CORRECTION.**

Posting notice as to, see **SCHEDULES OR TARIFFS.**

See also **JOINT TARIFFS.**

For combined service. *New York, N. H. & H. R. Co. v. Platt*, 823.

Excess of, recovered by shipper. *Suffern, H. & Co. v. Indiana, D. & W. R. Co.* 255.

1. That a shipper is allowed a rate better than he was entitled to, by mistake of the station agent, does not entitle him to such rate upon later shipments. *Rea v. Mobile & O. R. Co.* 43.

2. A railroad company which causes a development company, the entire stock of which it owns, to purchase and ship grain without any bona fide interest therein, the railroad company accepting drafts in payment of its freight charges, and the only rate paid being the profit upon the transaction, which varies with each shipment, the whole transaction being a device to procure transportation of the grain at other than the published rate,—violates the Act to Regulate Commerce, §§ 2, 8, and 6. *Re Alleged Unlawful Rates & Practices*, 38.

3. Extraordinary or unnecessary costs of operation or management of the traffic of a carrier cannot be permitted to excuse unreasonable or unjust rates, discriminations, preferences, or prejudices. *Milk Producers' Protective Assn. v. Delaware, L. & W. R. Co.* 92.

4. The charge for the carriage of passengers between two points in different states need not be reduced under the Federal statute, because of the reduction of the maximum mileage rates in one of the states, subject to the right of the commission of that state to restore the old rate under which the charge was fixed by the Interstate Commerce Commission. *Savannah Bureau of Freight & Transp. v. Charleston & S. R. Co.* 601.

REASONABLENESS OF RATES.

5. A charge of 5 cents over the portion of a railway in Maryland, and a like charge over that portion in the District of Columbia, making a through fare of 10 cents for 7½ miles, cannot be presumed unreasonable in the absence of any direct evidence to that effect. *Willson v. Rock Creek R. Co.* 83.

6. A charge for interstate fares between two cities in different states, which is higher than the maximum charge for carriage of passengers allowed by the state statutes, is not unreasonable or otherwise unlawful, where the section of country between such points is particularly barren and sparsely settled, and the passenger receipts of the road have been decreasing for several years, and the conditions governing local passenger traffic of such road in one of the states are substantially dissimilar to those applying on its interstate passenger service between the two cities. *Savannah Bureau of Freight & Transp. v. Charleston & S. R. Co.* 601.

7. A through rate over a railroad 18½ miles long lying partly in Arkansas and partly in Missouri, of 10 cents per mile, while the local charges as allowed by statute in one state are 5 cents per mile and in the other 4 cents per mile, is unreasonable and unjust, where the net earnings are in excess of a moderate return on the actual investment. *Railroad & W. Comrs. v. Eureka Springs R. Co.* 69.

8. Distance, in the absence of other influences, controls in the determination of rates; and the higher rates on the ground of greater distance from a competing locality will not be held unreasonable unless there are circumstances operating to eliminate distance from consideration or counteract its influence. *Freight Bureau of Cincinnati v. Cincinnati, N. O. & T. P. R. Co.* 180.

9. The right of railroad companies to earn a proper return upon their investment is subject to the limitation of the Interstate Commerce Act forbidding discrimination between localities, and charging more for a short than for a long haul. *Brewer v. Louisville & N. R. Co.* 224.

10. While transportation charges should be liberal until the earnings are sufficient for a fair return on actual investment it does not follow that rates long maintained and grossly discriminative should be continued or exacted year by year. *Cary v. Eureka Springs R. Co.* 286.

11. That the rates for longer hauls are comparatively lower, though absolutely higher, than the charges for shorter hauls over the same lines, does not necessarily show that the charges for the shorter hauls are unreasonable, though such fact tends to establish unreasonableness, and may under some circumstances be sufficient for that purpose. *Kentucky R. R. Comrs. v. Cincinnati, N. O. & T. P. R. Co.* 380.

12. The comparative reasonableness of rates for transportation of grain to two different cities should, so far as distance is controlling, be tested by distance over the shortest available routes from the place of shipment to such cities. *Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co.* 481.

DISCRIMINATION BETWEEN PASSENGERS.

13. A railway company practises no discrimination within the Interstate Commerce Act by selling passenger tickets at full fare to a land company which sells them at half rates to guests of its hotel, persons residing upon land sold or transferred by it, and others, but refusing to sell them at half rates to a person living in the same locality upon ground not acquired from it, although the two corporations are under substantially the same ownership and control, where their community of interests is not made a device for enabling the railway company to evade its legal obligations. *Willson v. Rock Creek R. Co.* 83.

DISCRIMINATION BETWEEN SHIPPERS.

14. The imposition by railroad companies of storage charges on some consignees, and not upon others, is prohibited by the Act to Regulate Commerce, § 2, the intent of which is to prevent discrimination between individuals. *American Warehousemen's Assn. v. Illinois C. R. Co.* 556.

15. A charge by railroad companies for storage on some consignees, and not on others, is also prohibited by the Act to Regulate Commerce, § 3, providing generally against undue preferences between shippers. *Id.*

QUANTITY OF SHIPMENT.

16. Charging the same rate per quart on milk in 40-quart cans, and in bottles usually of 1-quart capacity packed in cases, constitutes discrimination in favor of the bottle method of shipment. *Milk Producers' Protective Assn. v. Delaware, L. & W. R. Co.* 92.

17. The rule of equality as to rates is violated by lower rates for cargo or trainload quantities than for carload shipments, whether for export or for domestic use, although all cargo shippers pay the same rate and all carload shippers are charged alike. *Paine v. Lehigh Valley R. Co.* 218.

CLASSIFICATION.

18. Tomatoes and beans need not be rated in the same class where beans are more perishable than tomatoes, but such difference does not justify a difference of nearly one half in the rate, where the actual cost of transportation is nearly the same. *Rea v. Mobile & O. R. Co.* 43.

19. The charging in any case by railroad companies of a higher rate on wheat than on flour between the same points and on the same line is unjust discrimination and unlawful within the Act to Regulate Commerce. *Milwaukee Chamber of Commerce v. Chicago, M. & St. P. R. Co.* 481.

20. Classifying open-end envelopes made for enclosed merchandise put up in paper boxes and shipped in wood cases as envelopes as first class in less than carload lots and third class in carload lots, instead of as paper bags as third class in less than carload lots, and fifth class in carload lots, does not constitute a discrimination, where paper bags are usually done up in paper bundles so that a car which will with difficulty hold 20,000 pounds of envelopes will easily hold 36,000 pounds of paper bags. *Wolf v. Allegheny Valley R. Co.* 40.

DISCRIMINATION BETWEEN PLACES.

21. The location of Cincinnati, north of the Ohio river, and the fact that railroads to the south must cross the river upon expensive bridges, for which allowance is charged or made in the division of rates, justify a higher differential from Cincinnati in respect to rates from Louisville on the south bank of the river to points in the region surrounding Montgomery, Alabama, and points between such region and the Mississippi river. *Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 180.

22. A differential of 2 cents to Philadelphia and 3 cents to Baltimore below the rates to New York from Chicago and other western points on grain, flour, and provisions cannot, without reference to the actual operation of such differentials, be held to create an undue or unreasonable preference against New York, when it is considered that the latter city is some distance further from Chicago than the others and that its ocean facilities greatly surpass those of the other cities. *New York Produce Exch. v. Baltimore & O. R. Co.* 612.

23. That a city from its location obtains better rates from the points of origin, upon articles which it distributes to a certain territory, than another city, constitutes no reason for subjecting it to discrimination, in favor of such other city, in rates to such territory. *Freight Bureau v. Cincinnati, N. O. & T. P. R. Co.* 180.

24. A charge of higher rates from certain points to a place than is made on traffic carried through such place to another place in competition therewith constitutes an unjust discrimination under the Interstate Commerce Act, § 3. *Brewer v. Louisville & N. R. Co.* 224.

25. A difference in rate is justified by the different location between Council Bluffs on the east bank of the Missouri river and Omaha on the west side, as to traffic with points in Iowa, although the rates to all other points are substantially the same, in view of the tolls upon the expensive bridge connecting the two cities. *Commercial Club v. Chicago & N. W. R. Co.* 386.

26. To justify interference by the Interstate Commerce Commission with the adjustment of rates as between rival localities, it must appear that the preference and advantage to the one, and the corresponding prejudice and disadvan-

tage to the other, are so appreciable and established with such a degree of certainty as to be justly declared unreasonable. *Id.*

27. Rates from New Orleans to La Grange are unreasonable in themselves and relatively, as compared with rates to Atlanta, where the latter rates are such that an Atlanta dealer can ship from New Orleans to Atlanta and then back to La Grange as cheaply as the goods can be shipped from New Orleans to La Grange, and higher rates from New Orleans to La Grange than those charged to Atlanta are unlawful. *Calloway v. Louisville & N. R. Co.* 431.

28. A differential of 50 cents more per ton from Charleston than from Savannah to points in Georgia, other than common points, is not unreasonable or prejudicial to Savannah. *Savannah Bureau of F. & T. v. Charleston & S. R. Co.* 458.

29. A lower differential as between Savannah and Charleston on fertilizer to points in Alabama reached by the Alabama Midland Railway than the differential established between those cities on fertilizer to points in Georgia is not justified. *Id.*

30. Railway companies are not prohibited by the Act to Regulate Commerce, § 8, from preferring one locality to another, unless such preference amounts to an undue or unreasonable one. *New York Produce Exch. v. Baltimore & O. R. Co.* 612.

31. A preference by railroad companies, without legitimate excuse, of one locality over another, is of itself an undue and unreasonable preference within the prohibition of the Act to Regulate Commerce, § 8. *Id.*

32. The question whether a preference by railroad companies in freight rates charged in favor of certain localities as opposed to others is undue or unreasonable within the Act to Regulate Commerce, § 8, is one of fact in each individual case. *Id.*

33. A carrier cannot be compelled to disregard distance between two competing cities for the purpose of putting the two cities on a commercial equality. *Id.*

34. Competition between railroad companies may justify the preference of one locality to another as to freight rates charged to such localities, although it does not necessarily justify such preference. *Id.*

35. Competition between railroad companies may afford a legitimate reason for a preference by railroad companies to one city over another. *Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co.* 513.

36. In a total haul of 640 miles a rate which for the first 271 miles is the same and in the next 200 miles falls from 70 to 80 cents upon second-class and from 44 to 23 cents upon third-class shipments is prima facie unjust and unreasonable and a discrimination against the nearer points in the group. *Rea v. Mobile & O. R. Co.* 43.

LONG AND SHORT HAUL.

37. The circumstances and conditions governing the transportation of fertilizer from Charleston to Valdosta and other stations are rendered substantially dissimilar from those applying in the transportation to shorter distance localities by railway competition at Valdosta and such other stations which controls and affects the rate. *Savannah Bureau of F. & T. v. Charleston & S. R. Co.* 458

38. That there is a greater market for the commodity at the longer than at

the shorter distance point does not create a substantial dissimilarity in circumstances and conditions, within the Act to Regulate Commerce, § 4, forbidding any common carriers subject to the Act to make a greater charge for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance. *Fewell v. Richmond & D. R. Co.* 854.

39. Competition at a given point between carriers which have agreed upon rates to the competing point does not constitute a substantial dissimilarity in circumstances and conditions, within the Act to Regulate Commerce, § 4, making it unlawful for a carrier subject to the Act, under substantially similar circumstances and conditions, to charge more for a shorter than for a longer distance over the same line in the same direction, the shorter being included within the longer distance; though such competition may afford a basis for relief by the Commission under the subsequent provision of the section. *Id.*

Brewer v. Louisville & N. R. Co. 324.

Kentucky R. R. Comrs. v. Cincinnati, N. O. & T. P. R. Co. 390.

40. Freely engaging in competition at one point, while wholly or largely suppressing it at a shorter distance locality, will not entitle carriers to make higher charges for shorter than for longer hauls over the same line in the same direction. *Calloway v. Louisville & N. R. Co.* 431.

41. No disturbance of rates, secret or open, creates such dissimilarity of circumstances and conditions under the Interstate Commerce Act, § 4, as will justify either of two or more competing carriers in charging more for the short than for the long haul without an order of the Interstate Commerce Commission. *Re Alleged Violation of the 4th Section of the Act to Regulate Commerce*, 61.

42. Charging the same aggregate rates on like traffic for longer and shorter distances over the same line in the same direction does not contravene the Interstate Commerce Act, § 4. *Milk Producers' Protective Assn. v. Delaware, L. & W. R. Co.* 92.

Savannah Bureau of F. & T. v. Charleston & S. R. Co. 458.

43. Water competition, to justify higher shorter distance charges, under the Interstate Commerce Act, § 4, must be actual competition for the transportation involved, and such as to dictate the rate by rail. A railroad rate so low as to drive water transportation out of existence cannot be justified by showing the possibility of water competition. *Brewer v. Louisville & N. R. Co.* 224.

44. If there can be exceptional instances in which competition between carriers subject to the Interstate Commerce Act may create such dissimilarity of circumstances and conditions as to justify a greater charge for a short than a long haul, it is not justified where competition exists at both the shorter and the longer distance points. *Id.*

45. Water competition to justify a greater charge by a railroad company for transportation for a shorter distance than for a longer distance, in the same direction and including the shorter distance, under the Act to Regulate Commerce, § 4, making such a charge unlawful unless the circumstances and conditions are substantially dissimilar, must be competition in transportation to the longer-distance point as to freight which, if not carried to such longer-distance point by the railroad, could reach such destination by water transportation. *Fewell v. Richmond & D. R. Co.* 854.

46. Higher rates by rail on fertilizer from Charleston to Savannah to intermediate points between such cities than over the entire distance between them are justified by the existence of the water competition. *Savannah Bureau of F. & T. v. Charleston & S. R. Co.* 458.

47. Neither joint tariffs nor an arrangement by the carriers with a wagon transportation company extending through lines to points not reached by railroads constitute substantially dissimilar circumstances and conditions, nor make them joint carriers with such transportation company, so as to justify less charges to such points reached by wagons than upon the same goods from the point of origin to the point where wagon transportation commences. *Cary v. Eureka Springs R. Co.* 286.

48. Freight rates over the Louisville & N. R. Co., higher from New Orleans for the shorter distance to La Grange, Georgia, than for the longer distance to Hogansville, Newman, Palmetto, or Fairburn, in the same state, violates the Interstate Commerce Act, § 4, as they are under substantially similar circumstances and conditions. *Calloway v. Louisville & N. R. Co.* 431.

49. It is a violation of the Interstate Commerce Act, §§ 1, 2, 3, for the Louisville & N. R. Co. to charge higher rates from New Orleans to La Grange than for longer distances to Hogansville, Newman, Palmetto, or Fairburn on like traffic carried under similar conditions and circumstances, as such rates subject dealers at La Grange and the city itself to undue and unreasonable prejudice and disadvantage, and give undue preference and advantage to the other localities and the dealers and merchants doing business therein. *Id.*

COMPETITION.

50. Charging the same rate from Savannah and Charleston over all-rail lines to points in Florida, in competition with ocean and rail competition from Savannah and Charleston, is not unlawful. *Savannah Bureau of F. & T. v. Charleston & S. R. Co.* 458.

51. American carriers will be temporarily relieved from the requirements of the Act to Regulate Commerce, § 4, that no higher rate shall be made to intermediate than to more distant points, to enable them to compete with a Canadian railway company which is not subject to the provisions of such Act, and which has greatly lowered the price charged for passengers traveling to and from the Klondike. *Re Atchison, T. & S. F. R. Co.* 593.

52. A railway system may properly make the same rate between certain points as is made by a longer and more circuitous line, and in so doing does not unjustly discriminate against a city located nearer to the point of destination because it charges no higher rate over the longer distance than it does from such city. *Savannah Bureau of F. & T. v. Charleston & S. R. Co.* 458.

BLANKET RATE.

53. A uniform or blanket rate of 32 cents on milk and 50 cents on cream per can of 40 quarts from all stations to the city in which the market is located, regardless of distance or difference in amount of service rendered, is unreasonable, unjust, and unduly prejudicial and disadvantageous to producers and shippers nearer the points of delivery, and violates the Interstate Commerce Act, §§ 1, 3. *Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co.* 92.

THROUGH RATES.

54. The Interstate Commerce Commission in a proceeding to correct an un-

reasonable freight rate to a particular city may, where the carriers forming the through line elect to divide the entire rate and designate a certain rate for the performance of a certain service which is performed by a particular carrier, deal with such carrier and such charge irrespective of the other charges making up the entire rate. *Cattle Raisers' Assn. v. Fort Worth & D. C. R. Co.* 518.

55. A shipment of grain to Kansas City from points west at local rates is local in its reshipment to Chicago or other destination, and does not entitle the grain to the benefit of the through rate from the original point of shipment, in the absence of any agreement at such point for through transportation; and the fact that such grain comes from a point further west is no reason for applying upon it any less or different rate than that in force in Kansas City. *Re Alleged Unlawful Rates and Practices*, 240.

56. Freight carried by the Louisville & N. R. Co. from New Orleans, either to Atlanta or La Grange, is through freight, entitled to through service, and the manner in which the service is conducted cannot alter its character so as to make that carried for La Grange partly local, while that to Atlanta is wholly through. *Calloway v. Louisville & N. R. Co.* 481.

TERMINAL OR DELIVERY CHARGES.

57. A corporation authorized by its act of incorporation to construct stockyards, connect them with the various lines of railway entering the city of Chicago, and either lease such connecting tracks for the transportation of livestock and other freight between the railways and the stockyards, or transport livestock and other freight over such connecting line itself, which elects to transport dead freight and furnish its own motive power and crews, but imposes a trackage charge on the railroad companies for the transportation of livestock over its track,—is not subject as to such livestock to the provisions of the Act to Regulate Commerce, which applies only to "common carriers engaged in the transportation of passengers or property." *Cattle Raisers' Assn. v. Fort Worth & D. C. R. Co.* 518.

58. A railroad company is not prevented from absorbing a terminal charge on livestock in one city, and exacting such a charge for terminal services in another city reached by a different line, by the Act to Regulate Commerce, § 2, prohibiting the rendering of a given service to one person for a less compensation than is exacted from some other person for the same service under substantially similar circumstances and conditions. *Id.*

59. The imposition of a terminal charge for the shipment of livestock to one market, if just and reasonable, is not an undue preference within the Act to Regulate Commerce, § 3, because no terminal charges are imposed for livestock shipped to a competing city. *Id.*

60. The imposition at one city of a terminal charge on live stock, while no such charge is imposed on dead freight, is not necessarily an unjust discrimination against live stock within the Act to Regulate Commerce, § 3. *Id.*

61. A common carrier may, if it sees fit, divide the total rate charged for the shipment of live stock, and make the cost of delivery a separate charge by itself. *Id.*

62. The imposition by a stock-yard company of a trackage charge for the use by railroad companies of tracks leading to its yards, after the free use of such tracks for many years, will authorize the railroad companies to impose a ter-

minal charge for the delivery of the stock, but not in excess of the trackage charge. *Id.*

63. Live stock shipped to Chicago with the understanding that it is to be delivered at the Union Stock-Yards in such city is subject to the provisions of the Act to Regulate Commerce until it is delivered at such yards. *Id.*

INSTANCES.

On beans, tomatoes, and other vegetables. *Rea v. Mobile & O. R. Co.* 43.

On coal. *Fewell v. Richmond & D. R. Co.* 354.

Montell v. Baltimore & O. R. Co. 412.

On cotton seed meal. *Boyer & Co. v. Chesapeake, O. & S. W. R. Co.* 55.

On fertilizer. *Savannah Bureau of F. & T. v. Charleston & S. R. Co.* 453.

On flour. *New York Produce Exch. v. Baltimore & O. R. Co.* 612.

On grain. *Alleged Unlawful Rates and Practices*, 33.

Paine Bros. & Co. v. Lehigh Valley R. Co. 218.

Alleged Unlawful Rates and Practices, 240.

Chamber of Commerce v. Chicago, M. & St. P. R. Co. 481.

New York Produce Exchange v. Baltimore & O. R. Co. 612.

On live stock. *Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co.* 513.

On milk and cream. *Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co.* 92.

On oats. *Paine Bros. & Co. v. Lehigh Valley R. Co.* 218.

On open-end envelopes. *Wolf Bros. v. Allegheny Valley R. Co.* 40.

On potatoes. *Freeman v. Atchison, T. & S. F. R. Co.* 202.

On provisions. *New York Produce Exch. v. Baltimore & O. R. Co.* 612.

On sugar and molasses. *Calloway v. Louisville & N. R. Co.* 431.

On wheat. *Board of Railroad Comrs. v. Cincinnati, N. O. & T. P. R. Co.* 280.

RATE SHEETS. See SCHEDULES.

RATE WAR.

As affecting freights, tariffs, and classifications. *Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co.* 92.

READJUSTMENT OF RATES.

Indicating basis of. *Chamber of Commerce v. Chicago, M. & St. P. R. Co.* 481.

Voluntary by carrier. *Montell v. Baltimore & O. R. Co.* 412.

Holding case open for. *Rea v. Mobile & O. R. Co.* 43.

REASONABLE RATES. See RATES.

REBATE.

Unlawfulness of. *Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co.* 92.

REBILLING.

Unlawfulness of practice. *Alleged Unlawful Rates and Practices*, 240.

RECONSIGNMENT.

Publishing charges for. *American Warehousemen's Asso. v. Illinois Cent. R. Co.* 556.

REDUCTION OF RATES.

Power of Commission as to, see **INTERSTATE COMMERCE COMMISSION**.

Based on amount of earnings. *Cary v. Eureka Springs R. Co.* 288.

By combination. *Freeman v. Atchison, T. & S. F. R. Co.* 202.

Of interstate fares because of reduced rates in state. *Savannah Bureau of Freight v. Charleston & S. R. Co.* 601.

Voluntarily made. *Chamber of Commerce v. Chicago, M. & St. P. R. Co.* 481.

Pending proceeding. *Boyer & Co. v. Chesapeake, O. & S. W. R. Co.* 55.

On milk and cream. *Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co.* 92.

REGULATION.

By Commission, what subject to. *Willson v. Rock Creek R. Co.* 88.

Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co. 92.

Cattle Raisers' Asso. v. Fort Worth & D. C. R. Co. 518.

Of carriers by Commission, extent of. *New York Produce Exch. v. Baltimore & O. R. Co.*

Shown on posted schedules. *Suffern, H. & Co. v. Indiana, D. & W. R. Co.* 255.

Presumption of approval of by Commission. *Suffern, H. & Co. v. Indiana, D. & W. R. Co.* 255.

RELIEF.

From fourth section of Interstate Commerce Act. *Alleged Violations of Fourth Section*, 61.

REPARATION.

Ordered to shipper. *Rea v. Mobile & O. R. Co.* 43.

By compliance with statute. *Boyer & Co. v. Chesapeake, O. & S. W. R. Co.* 55.

RESHIPMENT.

Re Alleged Unlawful Rates and Practices, 240.

RESTORATION.

Of rates. *Milk Producers' Protective Asso. v. Delaware, L. & W. R. Co.* 92.

Montell v. Baltimore & O. R. Co. 412.

Classification of Pennsylvania R. Co. 177.

RIVAL COMMUNITIES.

Rights as to rates. *Commercial Club of Omaha v. Chicago & N. W. R. Co.* 386.

See also, under **RATES**, as to *Discrimination between localities*.

ROUTE.

Refusal of a railroad company to receive and route a shipment in accordance with the request of the shipper that it be forwarded via a connecting line with which the company has at the time through billing arrangements and through rates, to the damage of the shipper, is a discrimination against him in violation of the Interstate Commerce Act. *Rea v. Mobile & O. R. Co.* 43.

RULES.

Shown on schedules. *Suffern, H. & Co. v. Indiana, D. & W. R. Co.* 255.

Presumption of approval of, by Commission. *Suffern, H. & Co. v. Indiana, D. & W. R. Co.* 255.

Reasonableness of, as to excess weight. *Suffern, H. & Co. v. Indiana, D. & W. R. Co.* 255.

SCALES.

Failure of carrier to provide. *Suffern, H. & Co. v. Indiana, D. & W. R. Co.* 255.

SCHEDULES OR TARIFFS.

1. Posting notices in a railroad station that all rates are on file in the office of the station agent and may be examined upon application to him is not a compliance with the requirements of the Interstate Commerce Act that the schedules be posted, although the expedient is adopted because the schedules have been repeatedly torn down. *Rea v. Mobile & O. R. Co.* 43.

2. Rules or regulations in any wise changing, affecting, or determining any part of the aggregate of a carrier's rates, fares, or charges must be shown separately upon the posted schedules; and any such rules or regulations promulgated in circulars issued independently of such schedules are not lawfully in force. *Suffern, H. & Co. v. Indiana, D. & W. R. Co.* 255.

3. Rules or regulations which, if enforced, would result in changing or affecting rates or charges shown on the published schedules must be notified to the public for the time required by law for other rate changes. The notice should set forth the changes proposed to be made in the existing schedule, and such changes must be shown by printing new schedules, or plainly indicating it on the schedules in force. *Id.*

4. Shippers and consignees cannot depend for the lawful rate or charge upon what may be quoted by the carrier's agent, but must be guided by the published rate sheets themselves. *Id.*

5. The joint "tariffs" contemplated by the Act to Regulate Commerce, § 6, providing that where passengers and freight pass over continuous lines or routes operated by more than one common carrier, and the several carriers establish joint tariffs of rates or fares, copies of such joint tariffs shall be filed with the Commission,—are those established by agreement and mutual consent of the several carriers, as distinguished from the mere aggregate of the separate rates of the several carriers for transportation over their respective routes. *New York, N. H. & H. R. Co. v. Platt*, 323.

6. A tariff of rates adopted by a carrier subject to the Act to Regulate Commerce, between a point on its own line and points on the line of a connecting carrier with which it has no agreement for a joint tariff, not showing its charges for the haul upon its own route, is illegal, independently of the legality of the charge for the haul upon its own route upon which the rates are based, since the requirement of § 6 as to the publication of rates upon its route cannot be complied with. *Id.*

7. A carrier subject to the Act to Regulate Commerce cannot, in the absence of a joint tariff established by agreement or understanding with a connecting line as contemplated by § 6, lawfully publish any other rates for transportation between points on its own line as to traffic destined to points on the connecting line than those fixed for traffic not destined beyond its own line. *Id.*

8. The publication by a carrier subject to the Act to Regulate Commerce, of

the aggregate local rates between points on its own line and those on the line of a connecting carrier with which it has no joint tariff, is not illegal; but it cannot lawfully add to the duly established rates of another carrier any amount it pleases less than its own rate, and publish and use that sum as a through rate, without the consent of the other company. *Id.*

9. Carriers may be required by the Interstate Commerce Commission, by a general order, to state in their tariffs what free storage facilities will be allowed and the terms and conditions under which they will be granted, under the Act to Regulate Commerce, § 1, providing that all charges for storage of property transported shall be reasonable and just, and § 6, providing that the schedules printed as aforesaid shall state separately the "terminal charges" and any rules or regulations which "in any wise affect or determine" any part of the aggregate of such rates and charges. *American Warehousemen's Assn. v. Illinois C. R. Co.* 556.

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pany than to a coal dealer is not undue or unreasonable discrimination in violation of the Pennsylvania Constitution, where the manufacturing company consumes the coal in creating products which furnish a large amount of additional transportation to the carrier, and especially where the coal carrier was bound to give such company the lower rate by a contract made years before the coal dealer began business.

Forfeited by sales.—A manufacturing company violates its right to accept lower rates for the transportation of coal than are given to a coal dealer if it sells coal even to its own employees; and the carrier on notice of such sales must charge such company the same rates that are charged to coal dealers.

Notice to others not necessary.—Notice by a carrier of special rates to other shippers entitled thereto by difference of conditions need not be given to regular shippers in order to protect the carrier from the charge of unreasonable discrimination.

The court says that differences of freight rates on coal to manufacturers and to mere dealers are and have been for many years in universal practice and not a single case other than this has as yet reached the courts of last resort in England or in the United States questioning the entire legality and propriety of such differences, and that circumstance is ample proof that both the professional and the lay mind have assented to the practice.

*David W. Sellers, W. Dorris and J. D. Dorris for appellant.
George B. Orlady for appellees.*

Case reported in full, 156 Pa. 220, 22 L. R. A. 263.

ELLIOT GRIMES, *Respt.*,

v.

GEORGE A. EDDY *et al.*, *Appts.*

(December 4, 1894.)

BY MISSOURI SUPREME COURT.

Prohibition of transportation of Texas cattle is unconstitutional.—The prohibition of the transportation of Texas, Mexican, Cherokee, and Indian cattle through a State by railroads and steamboats, is an unconstitutional regulation of commerce; but the invalidity of a provision against transportation of the cattle

does not invalidate regulations in the statute against bringing such cattle into the State or moving them from one part of the State to another.

The court says that, granting that all Texas cattle have power to communicate disease to native cattle, yet this power exists only when they come in contact with the ground, and that shipping such cattle by railroad or steamboat is attended with but little, if any, danger.

Jackson & Montgomery for appellants.

R. N. Bodine and *Stocking & Alexander* for respondent.

Case reported in full, 126 Mo. 168, 26 L. R. A. 638.

EDWARD METZ, *Pff. in Err.*,

v.

JOHN HAGERTY.

(June 20, 1894.)

BY OHIO SUPREME COURT.

Tax on cigarettes not an interference with interstate commerce.—The Ohio act of April 24, 1893, imposing a tax upon the business of trafficking in cigarettes or cigarette wrappers, is not void as an interference with interstate commerce in failing to discriminate between commerce within the State and that among the several States. Nor is it unconstitutional as providing for taxation by a rule not uniform or according to the true value of the property, nor as depriving a person engaged in the business of the equal protection of the laws.

The decision was by a divided court, and since the act was repealed before the case was decided, the reasons for the majority opinion are not set out by the court.

J. W. Warrington, M. A. Morris, John A. McMahon, John Doyle, George K. Nash and *Andrew Squire* for plaintiff in error.

Spiegel, Bromwell & Foraker and *James B. Kennedy* for defendant in error.

Case reported in full, 51 Ohio St. 521.

APPENDIX.

JOHN FITZGERALD, *Appt.*,

v.

FITZGERALD & MALLORY CONSTRUCTION COMPANY *et al.*

(June 26, 1894.)

BY NEBRASKA SUPREME COURT.

Abrogation of contracts in violation of interstate commerce effected by Interstate Commerce Act.—The Interstate Commerce Act abrogated all existing contracts with common carriers for interstate commercial rates, and specially vested in the Federal tribunals exclusive jurisdiction to inquire into and adjust such interstate rates as are alleged to be unfair and discriminative.

The Fitzgerald & Mallory Construction Company had a contract with the Missouri Pacific Railway Company to transport men and materials to be used in the construction of certain roads by the Fitzgerald & Mallory Construction Company, at construction rates, which were calculated to be at about the cost of transportation. Subsequently the railroad company exacted payment at the regular transportation rates, and the attempt was made to recover back the overcharge. The opinion contains a valuable discussion of the question, with the citation of many authorities.

Marquette, Deweese & Hall for appellant.

B. P. Waggener, A. R. Talbot and J. L. Webster for appellees.

Case reported in full, 41 Neb. 374.

STATE OF LOUISIANA, *ex rel.* PAUL GELPI *et al.*,

v.

BOARD OF ASSESSORS *et al.*, *Appts.*

(January 15, 1894.)

BY LOUISIANA SUPREME COURT.

Original packages in possession of importers are not subject to taxation.—The fact that imported goods remaining in the original packages in the importer's possession are for sale in his store does not change their ownership, or have the effect of mingling them with other goods that are not in original unbroken packages, so as to subject them to State taxation. So long as they

remain in their original packages, unsold, in the possession of the importer, they are not subject to taxation although they are offered by him for sale.

E. A. O'Sullivan and George W. Flynn for appellants.

Henry H. Hall for appellees.

Case reported in full, 46 La. Ann. 145.

COMMONWEALTH OF KENTUCKY

v.

HENDERSON BRIDGE COMPANY.

(May 25, 1895.)

BY KENTUCKY COURT OF APPEALS.

State taxation of interstate bridge is valid.—The right of a State to tax the franchise of a bridge corporation created by it is not defeated by the fact that the company had obtained from another State the privilege of extending its bridge from the boundary of that State at low-water mark to the high lands, and had acquired from Congress the privilege of maintaining the bridge across a navigable river, and the designation of the bridge as a post road.

Tax on bridge franchise valid.—Interstate business is not taxed by taxing the franchise of a bridge company which maintains a toll bridge between States.

William J. Hendric for the Commonwealth.

Helm & Bruce for defendant.

Case reported in full, 29 L. R. A. 73.

EMIL SYDOW, *Petitioner,*

v.

TERRITORY OF ARIZONA.

(January 25, 1894.)

BY ARIZONA SUPREME COURT.

Discrimination in license tax is invalid.—A territorial statute imposing a license tax upon all dealers in merchandise except products of the territory when vended by the producer thereof, and except when sold by auctioneers or commission merchants under

license or permission according to law, and making a violation thereof a misdemeanor, violates the Federal Constitution only in so far as it discriminates against products of other States, and not in so far as it requires a license from parties as merchants dealing in other goods, wares, and merchandise.

The court says a State has the power to require licenses for the various pursuits carried on and conducted within her limits, and to fix the amount thereof as she may choose; and she may license some occupations and exempt others, and may license dealers in one class of goods, wares, and merchandise, and not require a license from dealers in other classes.

W. H. Barnes and A. R. English for petitioner.

The Attorney General for the Territory.

Case reported in full, 36 Pac. 214.

CITY OF PHILADELPHIA

v.

AMERICAN UNION TELEGRAPH COMPANY, *Appt.*

(*April 8, 1895.*)

BY PENNSYLVANIA SUPREME COURT.

Municipal tax on wires and poles of telegraph company is not void.—A municipal ordinance imposing a tax upon wires and poles of a telegraph company operated and employed in transmission of messages between different States is not void as an interference with interstate commerce.

John R. Read, Silas W. Pettit and H. B. Gill for appellant.

Chester N. Farr, Jr., E. Spencer Miller, and Chester F. Warwick for appellee.

Case reported in full, 167 Pa. 406.

C. E. CLEMENTS, *Plff. in Err.*,

v.

TOWN OF CASPER.

(*January 16, 1894.*)

BY WYOMING SUPREME COURT.

Tax on persons selling goods by sample is void.—An ordinance requiring nonresidents selling goods by sample or otherwise

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valid unless the stipulation is reasonable, is not an interference with interstate commerce.

The court says these statutes should be treated as in the nature of statutes of limitation. If treated as statutes of limitation they simply affect the remedy, and do not attempt to affect the rights of the parties or to control or regulate in any manner interstate commerce. It is in the undoubted power of the State to pass laws prescribing periods of limitation in which remedies may be enforced, and to declare that limitation shall not within a certain time affect contracts that are made and entered into within its jurisdiction or sought to be enforced there.

J. W. Terry and Charles K. Lee for appellant.
Ledbetter & Woodward for appellee.

Case reported in full, 7 Tex. Civ. App. 116.

UNITED STATES

v.

JOHN CASSIDY.

(April 1, 2, 1895.)

BY UNITED STATES DISTRICT COURT (N. D. CAL.).

Commerce defined.—Commerce among the States consists of intercourse and traffic between their citizens, and includes the transportation of persons and property and the navigation of public waters for that purpose as well as the purchase, sale, and exchange of commodities.

Combination to interrupt interstate commerce illegal.—A combination or conspiracy that will interrupt the transportation of commodities from one State to another is within the act of Congress of July 2, 1890, declaring illegal every combination or conspiracy in restraint of trade or commerce among the several States; but the doing of some act in pursuance of the conspiracy is a necessary element of the offense.

Concerted action to induce railroad employees to quit work illegal.—Concerted action by several members of an organization of railroad employees in sending telegrams advising all its members to quit work until a controversy between a sleeping-car company and its employees shall be settled will become a criminal

conspiracy if such action is knowingly and wilfully directed by the parties to it for the purpose of obstructing and retarding the passage of the United States mails, or in restraint of trade and commerce among the States.

Illegal act by railroad company no justification for interference with interstate commerce.—It is no defense to a prosecution of railroad employees for conspiring to interfere with the United States mails or interstate commerce, that the railroad company obstructed and retarded the passage of the mails, or entered into a conspiracy in restraint of trade and commerce.

*H. S. Foote and Samuel Knight for the United States.
George W. Monteith for defendant.*

Case reported in full, 67 Fed. Rep. 698.

UNITED STATES

v.

HANLEY.

(January 20, 1896.)

BY UNITED STATES DISTRICT COURT (N. D. ILL.).

Sufficiency of indictment for receiving special rates or rebates.—An indictment for unjust discrimination in giving or receiving special rates or rebates under the Interstate Commerce Act is insufficient unless it is shown that an advantage is given to one person over that obtained by another, where both, fairly considered, are upon an equality in the time, kind, and circumstance of their offering.

Rebate not unjust discrimination.—Showing merely a rebate or variation from the usual rate in force is not sufficient to sustain an indictment under the Interstate Commerce Act for unjust discrimination.

Injury from discrimination must be shown.—Merely alleging the wilful giving of a rebate to a shipper is insufficient in an indictment under a clause of the Interstate Commerce Act forbidding such act, without showing injury to a rival shipper therefrom.

Form of indictment for rebate on series of shipments.—In case of a rebate in a gross amount upon a series of shipments, the government, for the purpose of founding an indictment, may

treat the whole series as one transaction, and the indictment need not specify the times of the respective shipments.

Provisions against false billing not applicable to rebates.—The provision of the Interstate Commerce Act against false billing, classification, and weighing, does not cover such means of evasion of the Act as rebates, drawbacks, or special rates.

Receiving rebate not indictable.—Merely receiving a rebate will not subject a shipper to indictment under the section of the Interstate Commerce Act prohibiting false billing, weighing, classification, or representation of the contents of the package.

John C. Black for the United States.

W. S. Forrest, T. E. Milchrist, Duncan & Gilbert and Winston & Meagher for defendant.

Case reported in full, 71 Fed. Rep. 672.

UNITED STATES

v.

TRANS-MISSOURI FREIGHT ASSOCIATION *et al.*

(November 28, 1892.)

By UNITED STATES CIRCUIT COURT (D. KAN.)

Combinations between railway companies not within Act July 2, 1890.—The Act of July 2, 1890, relating to trusts and combinations in restraint of trade, does not include combinations or agreements between railway companies.

J. W. Ady and *S. R. Peters* for complainant.

George R. Peck, B. P. Waggener, Wolcott & Vaile, Wallace Pratt, J. P. Dana, Spencer, Burnes & Mosman, J. D. Strong, W. F. Guthrie, J. M. Thurston, A. L. Williams, N. H. Loomis, R. W. Blair, John R. Hawley, W. F. Evans, M. A. Low, James Hagerman and *T. N. Sedgwick* for defendants.

Case reported in full, 53 Fed. Rep. 454.

SOUTHERN RAILWAY COMPANY

v.

CITY OF ASHEVILLE.

(August 24, 1895.)

By UNITED STATES CIRCUIT COURT (W. D. N. C.).

Municipal tax on railroad illegal.—A statute permitting a

municipal corporation to exact a license tax from every railroad doing business within its limits is void as an interference with interstate commerce.

The court said: It is true that, in estimating its license tax the city council only took into consideration the intrastate business of the company. But under the terms of the Act they could have made the estimate of the whole business of the company and we deal not with what the council did do, but with what they could have done under the authority conferred on them. The validity of this authority, not of their action under it, is the question before us.

F. H. Busbee for petitioner.

Julius C. Martin for defendant.

Case reported in full, 69 Fed. Rep. 359.

BEHLMER

v.

LOUISVILLE & NASHVILLE RAILROAD COMPANY *et al*

(January 22, 1896.)

By UNITED STATES CIRCUIT COURT (D. S. C.).

Effect of order of Commission against receiver, upon purchase at foreclosure sale.—A railroad company purchasing from the purchaser at a foreclosure sale of a railroad is not liable when the purchaser itself is not liable in proceedings to enforce a finding of the Interstate Commerce Commission against the receiver of the original company, by virtue of the provision of the terms of sale that the purchaser will pay all claims made against the receiver, and all obligations contracted and incurred by him prior to the delivery and possession of the property.

Effect of receiver's refusal to comply with order after purchase is in possession.—The refusal of the receiver of a railroad company to comply with an order of the Interstate Commerce Commission two months after the conveyance of the property on foreclosure, and fully a month after the purchaser is in exclusive possession in his own right, cannot bind the purchaser.

Liability of roads making through rate for discrimination to one of their number.—Railroad companies which, acting in

pendently, arrange their charges of freight so as to make a single through rate to be divided between them, for transportation between competitive terminal points, are not responsible for the charging, by another road joining in such through charge, of a local rate to an intermediate point on its line, although the through rate to the terminal point for the greater distance is less than that to the intermediate point for a less distance.

Competition with water route authorizes difference in rates.—Dissimilar circumstances exist authorizing a less rate to a terminal point reached by several routes of railroads of part rail and water and all-water routes than to a nearer point at which there is no competition.

Proceeding to enforce order of the Interstate Commerce Commission.

C. B. Northrop for petitioner.

J. W. Barnwell and *Ed. Baxter* for defendants.

Case reported in full, 71 Fed. Rep. 835.

Ex parte JAMES LENNON.

(October 2, 1894.)

By UNITED STATES CIRCUIT COURT OF APPEALS (6TH C.).

Jurisdiction to enjoin violation of Interstate Commerce Act.—The Federal courts have jurisdiction of a suit to enjoin violation of the Interstate Commerce Act by refusing to accept from a connecting carrier goods designed for interstate transportation.

Punishment of servant of corporation for violating injunction against it.—The servant of a corporation which has been enjoined from violating the Interstate Commerce Act may be punished for contempt in assisting in the violation of the injunction, although he was not a party to the suit or served with the order, if he had notice of it.

G. M. Barber, Frank H. Hurd and *J. H. Southard* for appellant.

George C. Greene for Lake Shore & Michigan Southern Railway Company.

Case reported in full, 64 Fed. Rep. 320.

ATCHISON, TOPEKA & SANTA FÉ RAILROAD COMPANY

v.

GOETZ & BRADA MANUFACTURING COMPANY.

(August 4, 1893.)

BY ILLINOIS APPELLATE COURT.

Mistake of carrier's agent will not render shipper liable for false description of goods in bill of lading.—A shipper of goods who correctly describes their character to a contracting freight agent of the company over whose line they are shipped does not falsely describe them, within the meaning of the Interstate Commerce Act, although the agent describes them in the bill of lading as "gas reservoir materials," while they are intended for use in the construction of a malt house.

Edgar A. Bancroft and George A. Peck for appellant.
Rubens & Mott for appellee.

Case reported in full, 51 Ill. App. 151.

GULF, COLORADO & SANTA FÉ RAILWAY COMPANY, *Appt.*,

v.

C. O. NELSON.

(October 25, 1893.)

BY TEXAS COURT OF CIVIL APPEALS.

Interstate shipments by lines having no established through rates not within Interstate Commerce Act.—The interstate commerce law does not apply in case of a shipment from one State to another where the several lines over which the freight passes have not established a joint tariff of rates so as to subject them to the penalties imposed by the law for its violation; consequently carriers so situated are not exempt from a State statute imposing a penalty upon a common carrier who refuses to deliver freight upon tender of the charges specified in the bill of lading.

J. W. Terry for appellant.
S. H. Lumpkin and J. A. Gillette for appellee.

Case reported in full, 4 Tex. Civ. App. 345.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY, *Appt.*,

v.

P. B. STONER.

(November 15, 1893.)

BY TEXAS COURT OF CIVIL APPEALS.

Collection of through freight charge compulsory.—A railroad company which has agreed with connecting lines upon a joint tariff of rates in compliance with the Interstate Commerce Act is required to collect the interstate rate for freight passing over its own and such lines and which it delivers to the consignee, and not a smaller sum named in the bill of lading issued by the initial carrier.

R. C. Foster and A. E. Wilkinson for appellant.

Potter & Giddings for appellee.

Case reported in full, 5 Tex. Civ. App. 50.

LAKE SHORE & MICHIGAN SOUTHERN RAILWAY COMPANY,

Plff. in Err.,

v.

STATE OF OHIO *ex rel.* GEORGE L. LAWRENCE.

(January Term, 1894.)

BY OHIO CIRCUIT COURT (8TH C.).

Requirement of stoppage of interstate trains not invalid.—A statute requiring each railroad within the State to cause three of its regular passenger trains each way to stop at all stations of cities or villages having more than a designated number of inhabitants is not invalid as applied to a railroad company having but one train each way not engaged in interstate commerce as a regulation of commerce between the States.

The court says: Although the act in question may, and as the railroad company now conducts its trains does, affect the transportation of persons traveling through the State of Ohio from one State to another, we are of the opinion that the Act is not a regulation of commerce between States, although it might be void if Congress, with its paramount authority, should pass an Act with which this would be inconsistent.

Estep, Dickey, Carr & Goff for plaintiff in error.

W. H. Polhamus for defendant in error.

Case reported in full, 8 Ohio C. C. 220.

WILLIAM H. FOSTER *et al.*,
^{v.}
CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY
COMPANY.

(June 15, 1893.)

By UNITED STATES CIRCUIT COURT (S. D. N. Y.).

Guaranty of prompt transportation not invalid.—A guaranty by a railroad company to an opera troupe transported over its line of arrival at destination at a certain time is not in contravention of the provisions of the Interstate Commerce Act against undue or unreasonable preference or advantage to any particular person or firm, although the transportation is had upon party-rate tickets.

The action was for damages for breach of the contract to carry within the specified time, and the carrier set up the invalidity of the contract because an undue and unreasonable preference or advantage had been given. The court said the transportation was not and was not to be any different from what any party might have had on the same train. The substance of the guaranty was that such connection would be made as would take the troupe through in time. This was not anything undue, but was what was due, and if it was not undue it was not unreasonable.

Henry Melville for plaintiffs.

Joseph M. Keatinge and *John T. Dye* for defendant.

Case reported in full, 56 Fed. Rep. 435.

WESTERN UNION TELEGRAPH COMPANY

^{v.}
CHARLESTON *et al.*

(June 21, 1893.)

By UNITED STATES CIRCUIT COURT (D. S. C.).

Tax on telegraph companies not void.—An ordinance of a city imposing a license fee upon every telegraph company or agency doing business in the city for business done exclusively in the city, not including business done to and from points without the State or business done for the government, its officers or agents, is not void as an interference with interstate commerce, although the same companies may also send interstate messages.

Smythe & Lee and *Mordecai & Gadsden* for complainant.

Charles Inglesby for defendants.

Case reported in full, 56 Fed. Rep. 419.

STATE OF MARYLAND, *Appt.*,
 v.
 CHARLES L. APPELGARTH *et al*
 (May 16, 1895.)

By MARYLAND COURT OF APPEALS.

Tax on oyster packing not void.—A license tax on all those engaged in packing or canning oysters for sale or transportation whose places of business are in the State is not an unconstitutional interference with interstate commerce as applied to those who may sell or transport their oysters beyond the State.

The court says: The law does not in any way discriminate in favor of the citizens of this State against the citizens of other States; on the contrary, it only applies to those whose places of business are in this State. Nor do we think it can be said that it in any way regulates or undertakes to regulate interstate commerce.

Of course oyster packers in this State may sell or transport all their oysters within the State, or they may sell or transport some of them beyond the State. But that does not prohibit the State from taxing them for the prosecution of their business within the State.

John P. Poe and Charles G. Kerr for appellant.

Gans & Haman for appellees.

Case reported in full 81 Md. 293, 28 L. R. A. 812.

STATE OF SOUTH CAROLINA, *ex rel.* J. V. GEORGE *et al.*,
 v.
 CITY COUNCIL OF AIKEN.
 (October 8, 1894.)

By SOUTH CAROLINA SUPREME COURT.

Power of State legislature under Wilson bill.—The sale of, as well as the conditions upon which, intoxicating liquors shall be transported after entering the territorial limits of a State, is left to State legislation by the act of Congress of 1890 known as the Wilson act.

The court said, in discussing the question, that the liquors arrive

in the State within the meaning of the act when they cross the borders and enter the territorial limits of the State.

Osmund W. Buchanan for relators.

G. W. Croft and *M. B. Woodward* for respondent.

Case reported in full, 42 S. C. 222, 26 L. R. A. 345.

N. P. WIND *et al.*, *Appts.*,

v.

ILER & COMPANY.

(January 21, 1895.)

By IOWA SUPREME COURT.

Shipment of liquor, when subject to commerce clause of Constitution.—Sales of intoxicating liquors shipped to another State in the original packages before the passage of the Wilson bill are not subject to the laws of that State respecting the recovery of money paid on such sales.

Breaking of original package, what constitutes.—The drawing of a bung from a barrel in which intoxicating liquors were shipped from another State, in order to obtain a small quantity for testing the article to determine an option to reject the purchase, does not destroy the nature of the original package.

The court says: We do not think that the inspecting or testing of an imported article to determine whether it shall be returned has the effect to make it a part of the general mass of property in the State.

E. R. Duffie, John P. Breen and *John Y. Stone* for appellants.

Congdon & Hunt, James M. Woolworth and *Smith McPherson* for appellee.

Case reported in full, 27 L. R. A. 219.

GEORGE L. BURROWS, *Pff. in Err.*,

v.

DELTA TRANSPORTATION COMPANY.

(October 1, 1895.)

By MICHIGAN SUPREME COURT.

Requiring fire screens on vessels burning wood, not an interference with interstate commerce.—A State statute requiring all

vessels using wood for fuel while navigating waters of the State to be provided with suitable fire screens does not conflict with acts of Congress or regulations of supervising inspectors, and is not an interference with interstate commerce.

Hanchett & Hanchett for plaintiff in error.

Simonson, Gillett & Courtright for defendant in error.

Case reported in full, 29 L. R. A. 468.

STATE OF IOWA

v.

V. A. WHEELLOCK, *App.*

(October 10, 1895.)

BY IOWA SUPREME COURT.

License fee on itinerant vendors of drugs, valid.—A reasonable license fee charged upon itinerant vendors of drugs or articles intended for the treatment of diseases, who publicly profess to cure or treat diseases, is not an unconstitutional interference with interstate commerce, although the medicines sold are in original packages brought from another State.

The court said, there is no discrimination in the statutes under consideration. They apply alike to itinerant vendors of drugs and nostrums produced in this State, and to those which come from without it; to residents and nonresidents of the State; to those who sell their own wares; and to those who act for others. The primary object of the act is not to derive a revenue for the use of the State, but in large part at least to protect its citizens against solicitations and harmful practices of irresponsible and unknown traveling vendors of drugs and other articles intended for the treatment of diseases or injury, who in carrying on their business publicly profess to cure or treat diseases, injuries, or deformities, and thus promote the sales of their wares to the credulous.

Pfau & Young and *Whitney Brothers* for appellant.

Milton Remley, Attorney General, and *Thomas A. Cheshire* for appellee.

Case reported in full, 30 L. R. A. 429.

STATE OF NORTH CAROLINA, *ex rel.* RAILROAD COMMISSION,

v.

WESTERN UNION TELEGRAPH COMPANY, *Appl.*

(November 21, 1893.)

By NORTH CAROLINA SUPREME COURT.

Telegraph messages between points in same State are not interstate commerce.—Telegraph messages between points in the same State do not constitute interstate commerce because of the fact that they traverse another State on their route.

The court places its decision upon the reasoning in *Lehigh Valley R. Co. v. Pennsylvania*, 145 U. S. 192, 36 L. ed. 672, 4 Inters. Com. Rep. 87.

Strong & Strong and *Robert Styles* for appellant.

Robert O. Burton for appellee.

Case reported in full, 113 N. C. 213, 22 L. R. A. 570.

GEORGE BURDICK, *Plff. in Err.*,

v.

PEOPLE OF THE STATE OF ILLINOIS.

(April 2, 1894.)

By ILLINOIS SUPREME COURT.

Regulation of sale of railroad tickets, valid.—The regulation of the sale of tickets on railroads and steamboats, which makes such sale unlawful without a certificate of authority from the carrier, is not a regulation of commerce beyond the power of a State legislature, but is a mere police regulation of a public employment.

The court says that the duties which the act imposes upon the carriers therein named and their agents cannot interfere with the freedom of interstate travel. Such travel is not impeded because tickets are required to be purchased from agents of the carrier who are provided with certificates of their authority. The limitation of the sale of tickets to such agents may be a restraint upon the business of scalpers and ticket brokers, but cannot be regarded as a burden upon interstate commerce. The business of the carrier being a proper subject for the exercise of the police power, its necessary incidents and adjuncts are also subject thereto. As the issuing and use of tickets are required in such

business their sale is an incident thereof and may be regulated by legislative action.

Hill & Martin for plaintiff in error.

Maurice T. Mahoney, J. W. Herbert, W. S. Forest and M. Rosenthal for the People.

Case reported in full, 149 Ill. 600, 24 L. R. A. 152.

STATE OF MINNESOTA, *Repts.*,

v.

M. L. GLADSON.

(*June 1, 1894.*)

BY MINNESOTA SUPREME COURT.

Statute requiring stoppage of through trains, valid.—A State statute requiring railroad companies to stop all regular passenger trains at county seats is not unconstitutional or void either as being an unreasonable regulation or as interfering with interstate commerce.

The court says: It is not necessary to put it on so narrow a ground; we will say that this is not a regulation of interstate traffic, but most distinctively a regulation of local traffic, the purpose for which the train was required to stop.

J. D. Armstrong and Bunn & Hadley for appellant.

H. W. Childs, George B. Edgerton, R. C. Saunders and S. G. L. Roberts for respondent.

Case reported in full, 57 Minn. 385, 24 L. R. A. 502.

McCANN & SMIZER, *Repts.*,

v.

GEORGE A. EDDY *et al.*, Receivers of Missouri, Kansas, & Texas Railway Company, *Appt.*

(*December 10, 1895.*)

BY MISSOURI SUPREME COURT IN BANC.

Prohibition of contracting for exemption from liability for negligence, constitutional.—A State statute prohibiting a carrier from contracting for an exemption from the negligence of a connecting carrier, when the first carrier undertakes to transport property to a point beyond its own route, is not an unconstitutional regulation of commerce among the States.

The court says the act in no way operates as a regulation of

trade and business among the States; no burden or restriction on transportation is imposed. Carriers are left free to make their own contracts in regard to compensation for their services for transportation between the States subject to congressional regulations. The statute merely prohibits a carrier who by contract undertakes to transport property to a point beyond its own route from relieving itself of responsibility for neglect to properly perform its duty. It only imposes the duty and liability which the law from considerations of public policy imposes upon all common carriers in the transportation of property over their own lines, though they may extend into other States.

George P. B. Jackson for appellant.

J. H. Rodes and *R. B. Bristow* for respondents.

Case reported in full, 133 Mo. 59, 35 L. R. A. 110.

SINGER MANUFACTURING COMPANY, *Pf.*

v.

WILLIAM A. WRIGHT.

(*July 15, 1895.*)

BY SUPREME COURT OF GEORGIA.

Tax upon citizens of foreign States.—A specific tax upon citizens of foreign States for doing business is not invalid if the property has become subject to taxation.

Tax upon conducting business in State, valid.—A specific tax levied under a statute of Georgia upon persons engaged in the conduct of a particular business there is not an unconstitutional interference with interstate commerce, where the property employed in the business has been brought into the State and has itself become subject to taxation therein.

The court says the property involved in the conduct of this business, having become intermingled with the general mass of property in the State, has itself become subject to taxation there, and upon principle the business of selling it is alike taxable in that jurisdiction.

George Hillier for plaintiff in error.

J. M. Terrell, Attorney General, *Dorsey, Brewster, & Howell*, and *C. I. Winn* for defendant in error.

Case reported in full, 97 Ga. 114, 35 L. R. A. 500.

Re ROZELLE.

(January 30, 1893.)

By UNITED STATES CIRCUIT COURT (E. D. Ark.)

Tax cannot be levied on broker selling by sample goods manufactured in another State.—A municipal ordinance which requires merchandise brokers maintaining an office within the city limits to pay an annual fee is not enforceable against a broker who sells by sample goods manufactured in another State.

Coleman & Coleman for petitioner.

Morris M. Cohn for respondent.

Case reported in full, 57 Fed. Rep. 155.

COMMONWEALTH, *ex rel.* FRANK OVERFIELD,

v.

A. B. WALKER.

(May 24, 1894.)

By PENNSYLVANIA COURT OF COMMON PLEAS, MCKEAN COUNTY.

Imposition of tax on peddlers unconstitutional.—A borough ordinance prohibiting hawking and peddling without a license is an unconstitutional regulation of commerce in so far as it assumes to affect persons making sales for business houses outside of the State.

J. W. Bouton for relator.

F. W. Smith for respondent.

Reported in full, 3 Pa. Dist. Rep. 534.

EDWARD YEARTEAU

v.

JOSEPH BACON'S ESTATE.

(July 12, 1893.)

By VERMONT SUPREME COURT.

Intoxicating liquors in original packages not subject to State legislation.—Prior to the Federal legislation upon the question, a State statute entitling a person who paid money for intoxicating liquor sold in contravention of law to recover back the amount paid for it did not apply to the case of a person who purchased the liquor from a citizen of the State who had imported it from another State and sold it in the original package.

H. S. Peck, Seneca Haselton, W. L. Burnap, and Henry Ballard for defendant.

C. M. Wilds and E. R. Hard for plaintiff.

Reported in full, 65 Vt. 516.

UNITED STATES

v.

E. C. KNIGHT COMPANY.

(January 21, 1895.)

BY UNITED STATES SUPREME COURT.

Act of July 2, 1890, not applicable to monopoly of the business of sugar refining.—The act of July 2, 1890, to protect trade and commerce against unlawful restraints and monopolies, does not apply to a combination of sugar refineries located throughout the United States, which gives them a practical monopoly of the business of sugar refining.

The court says: Commerce succeeds to manufacture, and is not a part of it. The power to regulate commerce is the power to prescribe the rule by which commerce shall be governed, and is a power independent of the power to suppress monopoly. But it may operate in repression of monopoly whenever that comes within the rules by which commerce is governed, or whenever the transaction is itself a monopoly of commerce. It is vital that the independence of the commercial power and of the police power, and the delimitation between them, however sometimes perplexing, should always be recognized and observed. Congress did not, by the act of July 2, 1890, attempt to assert the power to deal with monopoly directly as such; or to limit and restrict the rights of corporations created by the States or the citizens of the States, in the acquisition, control, or disposition of property; or to regulate or prescribe the price or prices at which such property or the products thereof should be sold; or to make criminal the acts of persons in the acquisition and control of property, which the States of their residence or creation sanctioned or permitted. Aside from the provisions applicable where Congress might exercise municipal power, what the law struck at was combinations, contracts, and conspiracies to monopolize trade and commerce among the several States or with foreign nations; but the contracts and acts of the defendants related exclusively

to the acquisition of the Philadelphia refineries and the business of sugar refining in Philadelphia, and bore no direct relation to commerce between the States or with foreign nations. It does not follow that an attempt to monopolize, or the actual monopoly of, the manufacture was an attempt, whether executory or consummated, to monopolize commerce, even though, in order to dispose of the product, the instrumentality of commerce was necessarily invoked.

Samuel F. Phillips, Lawrence Maxwell, Jr., Solicitor General, and Richard Olney, Attorney General, for appellant.

John G. Johnson and John E. Parsons for appellees.

Case reported in full, 156 U. S. 1, 39 L. ed. 325.

MERZ CAPSULE COMPANY
v.
UNITED STATES CAPSULE COMPANY.
(March 19, 1895.)

BY UNITED STATES CIRCUIT COURT (W. D. Mich.).

Agreement looking toward monopoly of manufacturing business, not an interference with commerce or with the act of July 2, 1890.—The court, following the case of *United States v. E. O. Knight Company*, 156 U. S. 1, 39 L. ed. 325, holds that an agreement by certain corporations and persons engaged in manufacturing gelatine capsules, that the entire property and business should be conveyed to a new corporation for the purpose of controlling the price of the output, and each of the individual manufacturers should become simply an employee of the new corporation, subject to its dominion and control,—was not an unlawful interference with commerce, or illegal under the act of July 2, 1890.

David E. Heineman and Edwin F. Conely for complainant.

H. E. Spaulding, F. A. Brooks, and Russell & Campbell for defendant.

Case reported in full, 67 Fed. Rep. 414.

GULF, COLORADO, & SANTA FÉ RAILWAY COMPANY, *Pf. in Err.*,
v.
HEFLEY.
(April 29, 1895.)

BY UNITED STATES SUPREME COURT.

State statute conflicting with Interstate Commerce Act void.—

A State statute providing a penalty in case a carrier refuses to deliver goods transported by it upon tender of the freight charges specified in the bill of lading is void as to interstate shipments, in so far as it conflicts with the Interstate Commerce Act of February 4, 1887, as amended by the act of March 2, 1889, requiring the publication of schedules of rates, and forbidding deviations from such schedules.

A. T. Britton, A. B. Browne, J. W. Terry, and George R. Peck for plaintiff in error.

Reported in full, 158 U. S. 98, 39 L. ed. 910.

A. G. FRERE

v.

VICTOR VON SCHOELER, *Appt.*

(December 10, 1894.)

BY LOUISIANA SUPREME COURT.

State tax on interstate towboats, illegal.—A statute imposing a license tax upon every person who shall engage in the business or vocation of operating towboats, to be graduated according to the gross annual receipts, is illegal in so far as it applies to boats operated under a permit from the United States government upon interstate waters.

The court says: The tax is a charge explicitly made as the price of the privilege of navigating the Mississippi River between New Orleans and the Gulf, in the coastwise trade, as the condition on which the State of Louisiana consents that the boats may be employed according to the terms of the license granted under the authority of Congress. The sole occupation sought to be subjected to the tax is that of using and enjoying the license of the United States to employ these particular vessels in the coastwise trade, and the State then seeks to burden with an exaction, fixed at its own pleasure, the very right to which the licensee is entitled under, and which he derives from, the Constitution and laws of the United States.

D. Caffery & Son for appellant.

J. S. Martel for appellee.

Case reported in full, 27 L. R. A. 414.

STATE OF NORTH CAROLINA, *Appt.*,v.
W. C. GORHAM.

(October 16, 1894.)

BY NORTH CAROLINA SUPREME COURT.

Tax on business of putting up lightning rods, legal.—A license tax on the business of putting up lightning rods is not a tax on interstate commerce, in case of a person who puts up no rods except those which he sells and which are brought from another State, although he puts them up without extra charge.

Frank J. Osborne and W. J. Peele for the State.

H. G. Connor and Perrin Busbee for appellee.

Case reported in full, 25 L. R. A. 810.

Ex parte G. A. J. SCOTT et al.

(March 4, 1895.)

BY UNITED STATES CIRCUIT COURT (E. D. Va.).

Prohibition of importation of oleomargarine, void.—An act forbidding the manufacture and sale of oleomargarine, when none is manufactured in the State, and the act is plainly aimed against that imported for sale from another State, is unconstitutional and void.

Samuel W. Small for petitioners.

William H. White for defendants.

Case reported in full, 66 Fed. Rep. 45.

Re DEBS.

(May 27, 1895.)

BY UNITED STATES SUPREME COURT.

Violation of injunction against interference with interstate commerce, punishable as a contempt.—The United States circuit courts have power to punish for contempt persons who violate their injunctions against interference with interstate commerce.

The court says: The entire strength of the nation may be used to enforce in any part of the land the full and free exercise of the national powers and the security of all rights intrusted by the Constitution to its care. The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails.

If the emergency arises, the army of the nation and all its militia are at the service of the nation to compel obedience to its laws. But, the court continues, the right to use force does not exclude the right of appeal to the courts for a judicial determination and for the exercise of all their powers of prevention.

Lyman Trumbull, S. S. Gregory, and C. S. Darrow for petitioner.

Edwin Walker and Richard Olney, Attorney General, for the United States.

Case reported in full, 158 U. S. 564, 39 L. ed. 1092.

MACGRANE COXE, *Appt.*,

STATE OF NEW YORK, *Resp.*

(January 15, 1895.)

BY NEW YORK COURT OF APPEALS.

State cannot grant right to land under tidewaters.—A State statute empowering a corporation to reclaim lands under tidewaters along the seacoast, by erecting dykes and pumping out the water from the land inclosed by them, and conferring the right of property in the lands so reclaimed, is in conflict with the power of Congress to regulate foreign and interstate commerce.

Julien T. Davies, E. B. Hinsdale, and Byron Traver for appellant.

G. B. D. Hasbrouck for respondent.

Case reported in full, 144 N. Y. 396.

Ex parte SIMON MAIER.

(August 1, 1894.)

BY CALIFORNIA SUPREME COURT.

Prohibition of sale of game imported from another State. legal.—A police regulation making it a public offense to buy and sell deer meat within the State, which is cut from the entire carcass brought from without the State, is not an unlawful attempt to regulate interstate commerce.

The court says: It is true the enforcement of the act may indirectly or incidentally affect, to some extent, traffic in the inhibited article between the people of this and other States, but that of itself is not sufficient to bring it within the objection that it is

an unlawful interference with commerce. The right of the States under the very comprehensive police power reserved to them under our dual system of government to regulate and control their own internal affairs, including trade, to the reasonable advantage and good of their people, is conceded and upheld in all the cases in which the question, growing out of the right of the Federal Congress to regulate interstate commerce, has arisen. Petitioner imported the meat into the State, broke the original package, and put the commodity upon the market. It thereupon became property strictly subject to State regulation and control, and fell within the denunciation of the statute.

Hunsaker, Goodrich, & McCutchen for petitioner.

H. C. Dillon and *M. W. Conkling* for respondent.

Case reported in full, 103 Cal. 476.

JAMES F. WEBSTER

v.
LEWIS McK. BELL.

(June 5, 1895.)

BY UNITED STATES CIRCUIT COURT OF APPEALS (4th C.).

License tax on express companies, illegal.—An ordinance requiring every express company having an office in the city, and receiving goods, wares, and merchandise, and forwarding them to points within the State, or receiving goods, wares, or merchandise within the State and delivering them in the city, to pay a license tax of a certain amount,—is an interference with interstate commerce.

The court says: The tax is on every express company having an office in the city and receiving goods and forwarding them to points within the State. Receiving them from what points? Evidently from any quarter within or without the State, for the next sentence is, “for receiving goods, wares, and merchandise within the State and delivering them in the city.” This description includes all the business of the express company. The tax is not confined to such business as the company does within the State, nor is any distinction made between the business done within the State and that done without the State.

Samuel G. Brent and *E. B. Taylor* for appellant.

John M. Johnson for petitioner.

Case reported in full, 68 Fed. Rep. 183.

Ex parte M. S. MOSLER *et al.*

(June Term, 1894.)

By HANCOCK COUNTY OHIO CIRCUIT COURT.

Regulation of sales by itinerant vendors of wearing apparel constitutional.—A statute requiring every itinerant vendor of wearing apparel to report the facts under oath to the secretary of state, and deposit with him \$500, and procure a State and municipal license before he shall advertise or hold forth any sale as bankrupt, insolvent, or closing out sale, or as a sale of goods damaged by smoke, fire, or otherwise,—is not an unconstitutional interference with interstate commerce, at least, if it applies to everyone alike.

Meehan & Jordan for applicants.

Theodore Totten, George W. Ross, and W. H. Kinder, Contra
Case reported in full, 8 Ohio C. C. 324.

COMMONWEALTH OF PENNSYLVANIA

^{v.}
SIMONS.

(November 30, 1894.)

By PENNSYLVANIA QUARTER SESSIONS, PHILADELPHIA COUNTY.

License tax on peddlers of farm products, unlawful.—A statute authorizing a city to require a license of all except farmers living in the State, who shall peddle the products of their farms in the city, is an unlawful regulation of interstate commerce.

The court says: No State can by virtue of the police or any other power preclude the inhabitants of other States from engaging in a branch of trade that is left open to her own citizens.

Samuel A. Boyle and George S. Graham for the Commonwealth.

Robert S. Clymer for defendant.

Case reported in full, 3 Pa. Dist. Rep. 792.

COMMONWEALTH OF PENNSYLVANIA *v.* MOONEY.

COMMONWEALTH OF PENNSYLVANIA *v.* WALKER.

(March 28, 1895.)

By PENNSYLVANIA COURT OF COMMON PLEAS FOR LANCASTER AND MCKEAN COUNTIES.

Tax on peddlers representing foreign principals, unlawful.—

A statute and ordinance prohibiting hawking and peddling without a license cannot be made applicable to representatives of a nonresident principal whose goods are manufactured in another State.

John E. Snyder and *S. W. Smith* for prosecutor.

John A. Coyle and *J. W. Bonton* for defendants.

Cases reported in full, 12 Lanc. L. Rev. 209, 210.

SOUTH BETHLEHEM

v.

HACKETT.

(April 1, 1895.)

BY PENNSYLVANIA COURT OF COMMON PLEAS FOR NORTHAMPTON COUNTY.

Tax on transient representative of nonresident employer, unlawful.—A statute permitting municipalities to impose a license fee upon all persons desirous of engaging in a transient retail business within a municipality, but excepting those who are engaged in a permanent business therein, cannot be made to apply to nonresidents having their permanent business place out of the State, but employing an agent to do a transient business in the municipality.

J. Davis Broadhead for plaintiff.

W. E. Doster for defendant.

Case reported in full, 12 Lanc. L. Rev. 196.

STATE OF MINNESOTA

v.

NORTHERN PACIFIC EXPRESS COMPANY.

(July 25, 1894.)

BY MINNESOTA SUPREME COURT.

Exportation of fish may be prohibited.—A State may lawfully prohibit the shipment out of the State of certain kinds of fish caught within its borders.

The court says: The fish had never become articles of commerce within the meaning contended for by defendant's counsel. Under the laws of the State they had, it is true, become private property, but of a qualified and limited character; one of the attached limitations being that they should not be shipped out of

the State—that is, should not become the subject of interstate commerce.

J. H. Mitchell, Jr., and Tilden R. Selmes for appellant.

H. W. Childs and *W. E. Bramhall* for the State.

Case reported in full, 58 Minn. 403.

Re FLINN.

(August 24, 1893.)

BY UNITED STATES CIRCUIT COURT (W. D. N. C.)

Tax on sale by sample of goods not within State, invalid.—An attempt by a State to levy a tax, under a penalty upon the sale by sample of goods not within the State, is an unconstitutional interference with interstate commerce.

Although the court held that *prima facie* the act under which the tax was levied in this case was not unconstitutional, yet, since there had been no hearing in any of the State courts and the amount of the penalty was small, and there was no allegation of unnecessary delay in proceeding, or anything to show injustice or oppression, that on the ground of comity the court should not release the petitioner on habeas corpus, but under a stipulation in the case, in order that the case might be heard on the merits, an order for release was entered, unless counsel for the State showed cause why it should not be entered.

E. G. Ewart for petitioner.

Case reported in full, 57 Fed. Rep. 496.

CITY OF SAN BERNARDINO, *Appt.*,

v.

SOUTHERN PACIFIC COMPANY, *Resp.*

(June 27, 1895.)

BY CALIFORNIA SUPREME COURT.

Tax on carrier doing interstate business, void.—That a city is on a branch, and not on the main line, of an interstate railroad will not entitle it to impose a license fee upon the railroad for the privilege of doing business which is in fact interstate.

Rolfe & Rolfe for appellant.

W. J. Hunsaker, William F. Herrin and *Bicknell & Trass* for respondent.

Case reported in full, 29 L. R. A. 327.

OHIO & MISSISSIPPI RAILWAY COMPANY, *Appt.*,

v.

J. TABER.

(June 5, 1896.)

BY KENTUCKY COURT OF APPEALS.

Stipulation for notice before unloading of stock void in Kentucky.—A stipulation in a contract for the shipment of stock that no recovery for damages can be had unless written notice is given to the carrier before the stock is unloaded is in violation of Kentucky Constitution, § 196, providing that no common carrier can contract for relief from its common-law liability; and such provision is not an unlawful attempt to regulate or interfere with interstate commerce when applied to a shipment into another state.

W. H. Marriott, Walker D. Hines, and Charles H. Gibson for appellant.

Hobson & O'Meara for appellee.

Case reported in full, 34 L. R. A. 688.

J. C. STRATFORD, JR., *Appt.*,

v.

CITY COUNCIL OF MONTGOMERY.

(July 25, 1895.)

BY ALABAMA SUPREME COURT.

Broker doing interstate business not taxable.—A municipal ordinance requiring for the purposes of revenue the payment of a license tax by local commercial brokers cannot apply to a broker who confines himself to interstate business as, if so applied, it would be an invasion of the power of Congress over commerce.

Roquemore & White for appellant.

Graham & Steiner for appellee.

Case reported in full, 110 Ala. 619.

WROUGHT IRON RANGE COMPANY

v.

J. A. CARVER.

(March 24, 1896.)

BY NORTH CAROLINA SUPREME COURT.

License tax on peddlers not unconstitutional as applied to foreign corporations.—A statute imposing a license on peddlers and providing that no person carrying a wagon, cart, or buggy to exhibit any wares or merchandise shall be considered a peddler, is not, as applied to a foreign corporation doing business in the state, an unlawful interference with interstate commerce.

The court says: The plaintiff is a foreign corporation and can only do business in this state by the rules of comity; and it would seem under this doctrine it ought not to claim, and if it does claim, it should not be allowed, greater privileges than our own citizens. As they are allowed to come here under the doctrine of comity they are entitled to the same protection and are subject to the same burdens on their business as are imposed on the business of our own citizens and no more. A state may impose the same license tax on peddlers from other states that it imposes on its own citizens. The court relies to support its ruling upon *Howe Mach. Co. v. Gage*, 100 U. S. 678, 25 L. ed. 755.

Shepherd & Busbee and Boone, Merritt, & Bryant for appellant.

W. A. Guthrie and A. L. Brooks for appellee.

Case reported in full, 118 N. C. 328.

PAUL GELPI *et al.*,

v.

C. H. SCHENCK.

(December 14, 1896.)

BY LOUISIANA SUPREME COURT.

Importer not subject to municipal tax.—Importers of goods who have sold them in the original packages but have not collected the proceeds cannot be compelled to pay a municipal tax upon the goods, since the payment of the import duty gives them

the right to dispose of the goods, as well as to bring them in to the state.

Samuel L. Gilmore and W. B. Sommerville for appellants.

Harry H. Hall for appellee.

Case reported in full, 48 La. Ann. 1535.

INTERSTATE COMMERCE COMMISSION

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BELLAIRE, ZANESVILLE, & CINCINNATI RAILWAY COMPANY.

(January 11, 1897.)

BY UNITED STATES CIRCUIT COURT (S. D. OHIO).

Intrastate railroad not bound to make report to Commission.—

A railroad company whose line is entirely within the lines of a single state, and which never issues a bill of lading to any point beyond its own line, and receives no freight under through bills of lading, although it pays advance charges when necessary and collects its own charges from the company which takes interstate freight to its final destination, is not within the Interstate Commerce Act, and cannot be compelled to make the report required by the supplementary act of August 7, 1888, § 6.

The court says: I have no doubt that Congress would have the power to amend the act so as to require them and other companies occupying like relations to file reports, inasmuch as they all carry freight destined for points beyond the state in which the road is located. But the act is not so framed as to include the defendant company, and while it is a proper act of courtesy for the defendant company to furnish annual copies of its report to the state commissioner of roads and telegraphs it cannot be forced to make such reports. The provisions of the supplemental act is to be strictly construed for the reason that § 6 enacts that the failure or refusal to make report shall operate as a forfeiture in each case in a sum of not less than \$1,000 nor more than \$5,000.

Harlan Cleveland for complainant.

William F. Hunter for respondent.

Case reported in full, 77 Fed. Rep. 942.

UNITED STATES
v.
JOINT TRAFFIC ASSOCIATION.

(May 28, 1896.)

BY UNITED STATES CIRCUIT COURT (S. D. N. Y.).

Association for securing proportional rates valid.—A joint traffic agreement between railroads providing for reasonable although equal or proportional, rates for each carrier, or a just and proportional rate for each carrier, or a just and proportional division of traffic among the carriers,—is not a pooling of their traffic or freights, or a division of the net proceeds of their earnings within the prohibition of the Interstate Commerce Law, § 5.

United States cannot enjoin carrying out of joint traffic agreement.—The right of the United States government to control carriers engaged in interstate and foreign commerce and in carrying the mails does not extend to the maintenance of a suit in equity to enjoin railroad companies not chartered by the United States from making or carrying out a joint traffic agreement which does not violate the statutes against pooling of freight earnings.

Joint traffic agreement not within act of 1890.—A contract between railroad companies by which a joint traffic association is made, which does not lessen the number of carriers, their facilities, or raise the rates except expressly as they shall not be contrary to law, and leaves each road to carry on its own business within the lawful limits as before,—is not within the act of Congress of 1890 (26 Stat. at L. 209), prohibiting a contract, combination in the form of trust, or conspiracy in restraint of trade or commerce among the several states, although it dispenses with soliciting agents or with the control of them.

Wallace Macfarlane for plaintiff.

James C. Carter, Edward J. Phelps, and George F. Edmunds for defendant.

Case reported in full, 76 Fed. Rep. 895.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS

v.
G. B. CARDEN *et al.*

(February 19, 1896.)

By TEXAS COURT OF CIVIL APPEALS.

State cannot fix penalty for delay of delivery of freight.—A state statute fixing a penalty for detention and delay of delivery of freight which is inconsistent with the provisions of the Interstate Commerce Act is void as to interstate shipments.

McDowell, Miller, & Hawkins, Clark & Bolinger, and Sam. H. West for appellants.

No appearance for appellees.

Case reported in full, 34 S. W. 145.

DAVIS *et al.*,

v.
TEXAS & PACIFIC RAILWAY COMPANY.

(February 1, 1896.)

By TEXAS COURT OF CIVIL APPEALS.

Act of Congress forbidding exportation of diseased cattle is applicable only to interstate shipments.—The act of Congress of May 29, 1894, forbidding the exportation of diseased cattle, was not intended to interfere with shipments of cattle from one point to another wholly within a state, but applies only to interstate shipments.

Earnest & Shepherd for appellants.

Smallwood & Smith for appellee.

Case reported in full, 12 Tex. Civ. App. 427.

JOHN J. DILLON

v.
ERIE RAILROAD COMPANY.

(January, 1897.)

By NEW YORK SUPREME COURT, APPELLATE TERM.

Transportation between points in same state not interstate commerce.—Transportation from one point to another in the

same state with incidental passage through territory of an adjoining state is not interstate commerce subject to the regulation of Congress.

Statute limiting mileage rates not applicable to interstate commerce.—The power of Congress over commerce is not infringed by a statute requiring every railroad corporation operating a railroad "in this state" under the circumstances therein enumerated to issue mileage books at a cost not to exceed 2 cents per mile, as its provisions are applicable only to transportation between points both within the state, and not part of a through passage to or from a point in another state.

That coupons in a mileage book were to be used for travel without the state does not justify its refusal.—That the plaintiff's purpose in applying for a mileage book was to tender coupons in exchange for a ticket enabling him to travel from a point within to a point without the state does not affect his right to recover the penalty prescribed by N. Y. Laws 1896, chap. 835, for the refusal of a railroad company to issue to him a mileage book, although the company after issuing the book might properly refuse to accept the coupons in exchange for such ticket.

Stetson, Tracy, Jennings, & Russell for appellant.

Levi S. Tenney for respondent.

Case reported in full, 19 Misc. 116.

AUGUSTA SOUTHERN RAILROAD COMPANY

v.

WRIGHTSVILLE & TENNILLE RAILROAD COMPANY.

(April 18, 1896.)

BY UNITED STATES CIRCUIT COURT (S. D. GA.)

Local rate not reasonable on through freight.—The full local rate permitted by the state law is not necessarily, in the absence of a contract between railroads for through shipment, a just or reasonable rate on freight plainly not local or through freight.

Road forwarding through freight engaged in interstate commerce.—A railroad engaged in forwarding merchandise in the course of commerce between states is subject to the operations of

the Interstate Commerce Act, although it is wholly within one state.

Court may inhibit unreasonable charges.—Although the court cannot compel a railroad company to enter into a contract for through shipments with another company under the Interstate Commerce Act, it may compel it to receive and forward the freights tendered at its terminus by the latter company, and inhibit it from charging for such service rates so unreasonable as to prohibit the shipment of interstate freight by the road of the latter and as to compel all such freight to be shipped over the road in whose favor a discrimination is made.

Local rates on through freight not justified.—The exaction of local rates for freight not local is not justified where the services belonging to local rates are not offered, and such exaction is made for the purpose of diverting traffic or stifling a competitor.

Discrimination in favor of large customer not authorized.—The Interstate Commerce Law does not authorize discrimination in favor of a larger road or better customer.

Increase of rates unlawful.—The exaction of \$2.76 a ton on freight tendered by a connecting road, for which \$2.40 was formerly charged, and is still charged, another connecting road for precisely similar services, will be held an unreasonable and unlawful discrimination.

Leonard Phinzy for plaintiff.

A. F. Daley for respondent.

Case reported in full, 74 Fed. Rep. 522.

KEATING IMPLEMENT & MACHINE COMPANY

v.

FAVORITE CARRIAGE COMPANY & al.

(March 21, 1896.)

BY TEXAS COURT OF CIVIL APPEALS.

Prohibition of suit by foreign corporation not applicable to interstate business.—A statute prohibiting foreign corporations transacting or soliciting business, or which have established an office within the state, from maintaining an action on any demand

in any of the courts thereof, does not apply to such corporations while engaged in interstate commerce.

T. L. Nugent and John W. Wray for appellant.

Humphreys & McLean for appellees.

Case reported in full, 12 Tex. Civ. App. 666.

JOHN E. ROSELLE

v.

JOHN McAULIFFE.

(May 26, 1896.)

By MISSOURI SUPREME COURT.

Sale of lottery tickets not protected by interstate commerce.—

A ticket in a lottery authorized at the place of issue is not within the protection of the interstate commerce clause of the Federal Constitution,—especially in view of the legislation of Congress touching lotteries; and an agreement between the holders of different tickets to share the price that the ticket of any member might draw is to be tested by the law of the state in which the agreement is made, and not by the laws of the state where the lottery is located.

Hale & Son and J. W. Sebres for appellant.

Morton Jourdan for respondent.

Case reported in full, 35 S. W. 1135.

STATE, *ex rel.* M. F. SELLIGER,

v.

O'CONNOR.

(June 15, 1896.)

By NORTH DAKOTA SUPREME COURT.

Tax on sale of goods by sample unlawful.—A statute imposing a tax upon persons traveling from place to place engaged in selling goods by sample is an unlawful interference with commerce so far as it applies to persons taking orders for goods to be shipped from other states; and if it fails in regard to them it will not be upheld at all, since it cannot be assumed that the legisla-

ture would have discriminated against the business interests of the state in favor of those of other states.

Bangs & Fisk for petitioner.

J. F. Philbrick for defendant.

Case reported in full, 67 N. W. 824.

WESTERN UNION TELEGRAPH COMPANY

v.

LOUISA LARK.

(June 10, 1895.)

BY GEORGIA SUPREME COURT.

State may impose penalty for failure to deliver telegram.—One to whom a telegram is addressed may recover the penalty provided by a state statute for failure to promptly deliver it, although it was transmitted from another state, since the failure to deliver occurs after it has reached the state and come within its police power.

Crovatt & Whitfield and *Harrison & Peoples* for plaintiff in error.

D. C. McLennan for defendant in error.

Case reported in full, 23 S. E. 118.

WILLIAM M. DAVIS

v.

CHICAGO, MILWAUKEE, & ST. PAUL RAILWAY COMPANY.

(April 14, 1896.)

BY WISCONSIN SUPREME COURT.

Common law determines the validity of interstate carriage contract.—The validity of a contract for interstate transportation will be determined in accordance with the principles of the common law in the absence of any legislation to the contrary by Congress under its power to regulate commerce.

Burton Hanson and *George W. Bird* for appellant.

P. H. Fay for respondent.

Case reported in full, 93 Wis. 470, 33 L. R. A. 654.

PEOPLE

v.

JOSEPH B. SAWYER.

(September 26, 1895.)

BY MICHIGAN SUPREME COURT.

Resident selling goods subject to license tax.—A resident of a state traveling from house to house selling rugs from a general stock kept in the state and not in the original packages is not engaged in interstate commerce so as not to be subject to a municipal ordinance requiring a license fee.

Frank A. Rasch for the People.

D. F. Glidden for defendant.

Case reported in full, 106 Mich. 428.

CITY OF HUNTINGTON

v.

HARRY B. MAHAN.

(December 12, 1895.)

BY INDIANA SUPREME COURT.

Distribution of books ordered from another state cannot be prohibited.—Books published in another state and sold by canvassing agents and then sent by the publisher to a traveling agent for distribution are interstate commerce so that the traveling distributor cannot be subjected to a license tax by a municipality in which he is at work.

Kenner & Lesh for appellant.

Elmer E. Stevenson for appellee.

Case reported in full, 142 Ind. 695.

DANVILLE

v.

LIEBERMAN.

(July 6, 1895.)

BY PENNSYLVANIA COURT OF COMMON PLEAS, MONTGOMERY COUNTY.

Borough cannot tax nonresident merchant.—A borough or

finance which imposes a tax on a nonresident merchant doing a transient retail business in the state cannot be enforced.

R. Scott Ammerman for plaintiff.

William Kase West for defendant.

Case reported in full, 4 Pa. Dist. R. 475.

VON STEUBEN

v.

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

(January 19, 1895.)

BY PENNSYLVANIA COURT OF COMMON PLEAS, NORTHAMPTON COUNTY.

Foreign lessees of railroad subject to State police power.—The interstate commerce clause of the United States Constitution does not prevent a foreign corporation which leases a railroad within the state from being subject to the police power of the state so that it may be held liable for damages caused by fire set out by not having the required spark arresters.

W. S. Kirkpatrick, M. Kirkpatrick, and O. H. Myers for plaintiff.

E. J. Fox and J. W. Fox for defendant.

Case reported in full, 4 Pa. Dist. R. 153.

A. L. HALEY

v.

STATE OF NEBRASKA.

(November 8, 1894.)

BY NEBRASKA SUPREME COURT.

Box containing smaller packages the original package.—Where bottles of intoxicating liquor are wrapped separately in papers and sealed and the packages thus made packed for shipment in a box, the box and not the sealed packages is the original package, so that the opening of the box and sale of the packages would be a violation of the state liquor law.

W. S. Morlan for plaintiff in error.

George H. Hastings, Attorney General, for defendant in error.

Case reported in full, 42 Neb. 556.

HOUSTON & TEXAS CENTRAL RAILWAY COMPANY *et al.*, *Appts.*,

v.

H. G. WILLIAMS.

(*May 30, 1895.*)

By TEXAS COURT OF CIVIL APPEALS.

Shipment on through rate interstate.—A shipment of live stock on a through rate from one state to another is interstate, notwithstanding the limitation of the liability of the several carriers to their own lines.

O. T. Holt and *Baker, Botts, Baker, & Lovett* for appellants.
Hutcheson, Campbell, & Sears for appellee.

Case reported in full, 31 S. W. 556.

HOUSTON & TEXAS CENTRAL RAILROAD COMPANY. *Appt.*

v.

W. O. DAVIS.

(*June 5, 1895.*)

By TEXAS COURT OF CIVIL APPEALS.

Shipment under through bill of lading between points in same state not interstate.—A shipment of property under a through bill of lading from a point in one state to a point in another state is not an interstate shipment where the contract obligates the initial carrier to carry only to a point on its own road within the same state and no through rate for transportation is fixed.

O. T. Holt for appellant.

R. H. Ward and *R. E. Crawford* for appellee.

Case reported in full, 11 Tex. Civ. App. 24.

GULF, COLORADO, & SANTA FE RAILWAY COMPANY, *Plff. in Err.*,

v.

J. L. GRAY *et al.*

(*November 19, 1894.*)

By TEXAS SUPREME COURT.

State statute requiring care of live stock not applicable to interstate shipments.—The Texas statute requiring the carrier to

feed and water live stock during the time of conveyance, and until the same is delivered to the consignee, does not apply to shipments made from that state into others.

J. W. Terry and Charles K. Lee for plaintiff in error.

A. M. Monteith for defendants in error.

Case reported in full, 87 Tex. 312.

WESTERN UNION TELEGRAPH COMPANY, *Pf. in Err.*,

v.

GEORGE M. BRIGHT.

(*September 13, 1894.*)

BY VIRGINIA SUPREME COURT OF APPEALS.

Regulation of delivery of telegrams valid.—A state statute providing a penalty for failure to promptly deliver a telegram is not, even when applied to messages transmitted from another state, repugnant to the commerce clause of the United States Constitution.

Robert Stiles for plaintiff in error.

Anderson & Hairston for defendant in error.

Case reported in full, 90 Va. 778.

SARAH LUXTON

v.

NORTH RIVER BRIDGE COMPANY.

(*May 14, 1894.*)

BY UNITED STATES SUPREME COURT.

Congress may authorize construction of bridges.—Congress may, directly or through a corporation created for that object, construct bridges for the accommodation of interstate commerce by land.

Gilbert Collins for plaintiff in error.

Joseph D. Bedle for defendant in error.

Case reported in full, 153 U. S. 525, 38 L. ed. 808.

GALVESTON, HARRISBURG, & SAN ANTONIO RAILWAY COMPANY, *Appl.*,

v.

R. C. HERRING.

(*May 27, 1896.*)

By TEXAS COURT OF CIVIL APPEALS.

Contract limiting time within which suit can be brought invalid.—The provision of the Texas statute of March 4, 1891 that no contract limiting the period in which to sue to a shorter time than two years shall be valid, is not an attempt to regulate interstate commerce when applied to an interstate shipmen under a contract requiring suit to be instituted within forty days after the cause of action accrued.

Baker, Botts, Baker, & Lovett, and Clark, Summerlin, & Fuller for appellant.

No appearance for appellee.

Case reported in full, 36 S. W. 129.

INTERSTATE COMMERCE COMMISSION

v.

SOUTHERN PACIFIC COMPANY *et al.*

(*May 12, 1896.*)

By UNITED STATES CIRCUIT COURT (DIST. COLO.)

Court has jurisdiction to enforce order against resident of another district.—A United States circuit court has jurisdiction of a bill by the Interstate Commerce Commission to enforce its order against a railroad company which has its principal office in another district, where such company in connection with other companies operates all their roads under a common management or arrangement in making the interdicted rates, although such company by itself has been guilty of no violation of the order in the district.

The court says the order of the Commission relates to charges for transportation between Pueblo, Colorado, and San Francisco, California, as to which it is averred that the respondent roads are

"under a common control, management, or arrangement for a continuous carriage or shipment" between the points. The statute provides that a petition of this kind shall be filed in the district in which the common carrier complained of has its principal office or in which the violation or disobedience of the order or requirement shall happen. This is the district in which the violation or disobedience of the order has happened. The fact appears to be that the Southern Pacific Company has lines in California and in some of the States and territories between California and Colorado which connect with lines of the other respondents extending into and through the State of Colorado and to the city of Pueblo. If all these roads are operated under a common control, management, or arrangement in making the rates interdicted by the Interstate Commerce Commission, the act of one in this district is the act of all, and the violation or disobedience of the order by all the roads may be said to take place in this district.

H. V. Johnson for complainant.

Wolcott & Vaile, Charles E. Gast, and H. T. Rogers for defendants.

Case reported in full, 74 Fed. Rep. 42.

NORFOLK & WESTERN RAILROAD COMPANY

v.

COMMONWEALTH OF VIRGINIA.

(June 11, 1896.)

BY VIRGINIA SUPREME COURT OF APPEALS.

Train of empty cars not engaged in interstate commerce.—A train composed of empty coal cars, although destined for a point in another State to procure a load, is not engaged in transporting articles of interstate commerce so as to be beyond the control of State laws.

Prohibition of running trains on Sunday valid.—State laws prohibiting the running of railway trains on Sunday, if enacted in good faith for the preservation and protection of the health and morals of the people and without discrimination against inter-

state or foreign commerce, are not in conflict with the Constitution of the United States.

The court says, it cannot be doubted that such laws are police regulations of the greatest utility for the physical and moral well-being of society. Neither is there any question that the statute was enacted in good faith for the preservation and protection of the health and morals of the people of the State and without any discrimination whatever against interstate or foreign commerce, and that its only effect upon such commerce would be to delay it a few hours in its journey from the point of shipment to its destination.

Thomas J. Kirkpatrick, William H. Mann, and F. S. Kirkpatrick for plaintiff in error.

R. Taylor Scott, Attorney General, for defendant in error.

Case reported in full, 34 L. R. A. 105.

PRESCOTT & ARIZONA CENTRAL RAILROAD COMPANY

v.

ATCHISON, TOPEKA, & SANTA FÉ RAILROAD COMPANY & al.

(January 8, 1896.)

BY UNITED STATES CIRCUIT COURT (S. D. N. Y.).

Agreements for interchange of through freight to the exclusion of a rival road not illegal.—It is not within the prohibition of the act of July 2, 1890, against contracts in restraint of trade for several railroad companies to enter into a contract for the interchange of through freight among themselves to the exclusion of rival roads, since such action was not illegal at common law and is not forbidden by the Interstate Commerce Act, and the act of 1890 is directed solely against contracts which would have been unlawful before its passage.

C. N. Sterry for motion to dismiss.

Delos McCurdy, contra.

Case reported in full, 73 Fed. Rep. 438.

JULIUS LOWENSTEIN

JOHN GARY EVANS *et al.*

(October 9, 1895.)

BY UNITED STATES CIRCUIT COURT (DIST. S. C.).

United States act against monopolies not applicable to acts of a State.—A State statute for the purpose of monopolizing to the State the business of selling intoxicating liquors is not within the prohibition of the United States act of July 2, 1890, forbidding every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states or with foreign nations.

The court says: By this act the State makes no contract, enters into no combination or conspiracy. She declares and asserts in herself the monopoly in the purchase and sale of liquors. The section of the act of 1890 gives a right of action for any injury by any other person or corporation. The State is not a corporation. Nor can it be said that the State is a person in the sense of this act. Even were this the case, as the monopoly now complained of is that of the State no relief can be had without making the State a party and this destroys the jurisdiction of this court.

Murphy, Farrow, & Legare for plaintiff.

William A. Barber, Attorney General, and *O. P. Townsend* for defendants.

Case reported in full, 69 Fed. Rep. 908.

JAMES DONALD

v.

J. M. SCOTT *et al.*

(May 8, 1895.)

BY UNITED STATES CIRCUIT COURT (DIST. S. C.).

Citizen cannot be prevented from importing liquor for his own use.—A State statute which forbids a citizen to purchase in other States and import for his own use alcoholic liquors, the products of other States, discriminates against such products in a way

Appx.

which cannot be permitted under the guise of the police power. And if the act further permits the chief dispenser of liquor within a State to purchase in other States alcoholic liquors and to import them into the State for the purpose of selling them for use and consumption, at retail, within the State, and forbids all other persons from so purchasing and importing for their individual use and consumption, it unlawfully discriminates against all other citizens.

Bryan & Bryan for complainant.

William A. Barber, Attorney General, of South Carolina, and *O. P. Townsend* for defendants.

Case reported in full, 67 Fed. Rep. 854. See also *post*, lvi.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, *Appt.*,
v.
COMMONWEALTH OF KENTUCKY.

(*June 13, 1895.*)

BY KENTUCKY COURT OF APPEALS.

State may prevent consolidation of competing railroads.—A provision of a State Constitution that no railroad shall consolidate its capital stock, franchises, or property, or pool its earnings in whole or in part, with any other railroad owning a parallel or competing line, or acquire by purchase, lease, or otherwise any parallel or competing line, or operate the same, is not in conflict with the power of Congress to regulate interstate commerce.

Helm & Bruce and *Bullitt & Shields* for appellant.

William J. Hendrick, Humphrey & Davis, and *Frank Parsons* for appellee.

Case reported in full, 97 Ky. 675. See also *post*, lvii.

INTERSTATE COMMERCE COMMISSION
v.
CINCINNATI, NEW ORLEANS, & TEXAS PACIFIC RAILWAY COMPANY *et al.*

(*October 8, 1896.*)

BY UNITED STATES CIRCUIT COURT (S. D. OHIO).

Commission cannot fix maximum rates.—The Interstate Commerce Commission has no power to prescribe maximum rates to

be charged by the carrier, but the Act to Regulate Commerce leaves common carriers free to fix their own charges, subject to the leading prohibitions that they shall not be unjust or unreasonable and shall not unjustly discriminate.

Harlan Cleveland, L. A. Shaver, and George F. Edmunds for complainant.

Edward Baxter, Harmon, Colston, Goldsmith, & Hoadly, George P. Harrison, East & Fogg, J. D. DeBow, Dorsey, Brewster, & Howell, W. H. Henderson, Leigh R. Watts, and Lavoton & Cunningham for respondents.

Case reported in full, 76 Fed. Rep. 183. See also *post*, lv.

STATE OF LOUISIANA *et al*

v.

LAGARDE *et al*

(*March 2, 1894.*)

BY UNITED STATES CIRCUIT COURT (E. D. LA.).

Tax on sale of fertilizers manufactured in another state illegal.—The provisions of a State statute requiring payment of a tax by persons engaged in the sale of fertilizers cannot be made to apply to agents of manufacturers in another State who merely solicit orders and do not manufacture, pack, ship, handle, or even see the fertilizers.

The court says: Even if the act could be construed as an inspection law, or as an exercise of the police power of the State, the complainants' business could not be affected by it, as complainants do not deal with, nor handle, nor bring to the State fertilizers; and, even if the complainants were to import into the State original packages of fertilizers, and the act could be properly construed as an inspection law, within and under the police power of the State, still the interference with complainants' business would be in violation of the commerce clause of the United States Constitution.

M. J. Cunningham, Attorney General, *Lionel Adams*, and *Lazarus, Moore, & Luce* for the State.

J. P. Blair for defendants.

Case reported in full, 60 Fed. Rep. 186.

Ex Parte J. E. V. JERVEY et al.

(*March 12, 1895.*)

BY UNITED STATES CIRCUIT COURT (DIST. S. O.).

State act forbidding importation of liquor void.—A State statute forbidding the importation of intoxicating liquor from another State and providing for the arrest of persons who violate its provisions is in conflict with a power of Congress to regulate commerce and is not within the exceptions of the Wilson bill, since that act only permits State regulation of the liquor after it has arrived within the State.

The court was pressed to stay its hand in deference to the State court and permit the matter to be delayed on the way. But it is said, the question involved affects the commerce of every port in the State. Delay would work irreparable mischief. Let the channels of trade become once diverted, and it would take the life of a generation to restore them. If it be accepted that the master and crew of any vessel arriving at any port in South Carolina may be arrested and imprisoned simply for carrying goods in the course of foreign or interstate commerce, and while engaged in such transportation, and that they would have no protection, no vessel would venture to touch at any of them. It is for the interest of all citizens of the State that the question be settled and the constitutionality of all parts of the statute be ascertained and that speedily. But were this matter to be remanded to the trial justice who issued the warrant, and the cause take its slow course through that tribunal, then on appeal to the circuit court, then to the State court, then to the supreme court of the State, and by writ of error to the Supreme Court of the United States, years might intervene before a final decision could be reached. The cause can go up from this court direct to the Supreme Court of the United States and the prisoners be discharged from custody.

Bryan & Bryan for petitioners.

C. P. Townsend and *W. Gibbs Whaley* for respondent.

Case reported in full, 66 Fed. Rep. 957.

J. E. V. JERVEY

v.

THE CAROLINA *et al.*

(March 15, 1895.)

By UNITED STATES DISTRICT COURT (E. D. S. C.).

Vessel cannot be seized for importing liquor.—A statute providing that any conveyance transporting liquors at night, other than regular passenger or freight steamers and railroad cars, shall be liable to seizure and confiscation, cannot be enforced against a small schooner which entered a port during the night laden with liquor, since it is an interference with commerce as well as unlawful discrimination in favor of freight steamers.

J. P. K. Bryan for libellant.

W. A. Barber, Attorney General, *C. P. Townsend*, and *W. Gibbs Whaley* for defendant Holley.

Case reported in full, 66 Fed. Rep. 1013.

MINNEAPOLIS, ST. PAUL, & SAULT STE MARIE RAILWAY
COMPANY

v.

SAMUEL G. MILNER *et al.*

(July 29, 1893.)

By UNITED STATES CIRCUIT COURT (W. D. MICH.).

State may detain immigrants for quarantine purposes.—State health officers will not be enjoined from detaining immigrant passengers at the State lines for the purpose of inspection and quarantine, although they are journeying on a through route which runs between States and into a foreign country and although passengers from noninfected countries and localities are thus detained and they have been passed by the United States officials.

This ruling is placed upon the authority of decisions of the Supreme Court of the United States and upon the fact that the quarantine act of Congress of February 15, 1893, expressly recognizes the validity of State laws.

E. C. Chapin and *John D. Conley* for plaintiff.

A. A. Ellis for defendants.

Case reported in full, 57 Fed. Rep. 276.

Re CHARGE TO GRAND JURY.

(*February 15, 1895.*)

BY DISTRICT COURT (N. D. CAL.).

Railroad passes unlawful.—A railroad official who grants a pass as a matter of personal favor and friendship, to be used in an interstate journey by one who is not within the exceptions of the Interstate Commerce Act, is guilty of a violation of the provisions of that act against unjust discrimination.

Case reported in full, 66 Fed. Rep. 146.

NATIONAL DISTILLING COMPANY, *Appl.*

v.

CREAM CITY IMPORTING COMPANY, *Resp.*

(*November 7, 1893.*)

BY WISCONSIN SUPREME COURT.

Transactions between citizens of the same State are not within act of July 2, 1890.—Where both vendor and vendee in a sale of goods by a member of a trust formed for the purpose of acquiring complete control and monopoly of the trade in goods of that class, to one who contracted for a rebate in case all his purchases of goods of that class were made from the trust, are corporations of the State in which the sale is made, it is not a transaction of interstate commerce within the act of Congress of July 2, 1890.

George E. Sutherland for appellant.

C. W. Briggs for respondent.

Case reported in full, 86 Wis. 352.

INTERSTATE COMMERCE COMMISSION, *App.*

v.

CINCINNATI, NEW ORLEANS, & TEXAS PACIFIC RAILWAY
COMPANY.

(May 24, 1897.)

BY UNITED STATES SUPREME COURT.

Interstate Commerce Commission cannot prescribe rates.—Incorporating into the Interstate Commerce Act the common-law obligation resting upon a carrier to make all its charges reasonable and just, and directing the Commission to execute and enforce the provisions of the act, do not by implication carry to the Commission or invest it with power to exercise the legislative function of prescribing rates which shall control in the future. The Interstate Commerce Commission has no power to prescribe a tariff of rates which shall control in the future and therefore cannot invoke a judgment in mandamus from the courts to enforce any such tariff by it prescribed.

Duties of Commission stated.—The important duties of the Interstate Commerce Commission in respect to railroad rates include the duty of inquiry as to the management of the business with the right to compel complete and full information concerning it and the duty of seeing that there is no violation of the long and short haul clause of the act or any prohibited discrimination, rebate, or other device to give undue preferences and also that the publicity required by § 6 is observed.

The court says: The power of fixing rates under the Interstate Commerce Act is not to be determined by any mere considerations of omission or implication. The power to prescribe a tariff of rates for carriage by a town carrier is a legislative and not an administrative or judicial function. If Congress had intended to grant such a power to the Interstate Commerce Commission it cannot be doubted that it would have used language open to no misconception, but clear and direct.

Harlan Cleveland, George F. Edmunds, and Edward B. Whitney, Assistant Attorney General, for appellant.

Ed. Baxter for appellee.

Case reported in full, 167 U. S. 479, 42 L. ed. 243.

J. M. SCOTT *et al.*, *Plfs in Err.*,

v.

JAMES DONALD.

(*January 18, 1897.*)

BY UNITED STATES SUPREME COURT.

Discrimination against importation of liquors unlawful.—Where a State recognizes the manufacture, sale, and use of intoxicating liquors as unlawful it cannot discriminate against bringing such articles in and importing them from other States.

South Carolina dispensary law unconstitutional.—The South Carolina dispensary law of January 2, 1895, is unconstitutional and void as a hindrance to interstate commerce and an unjust preference of the products of that State as against products of other States, and is not within the scope of the act of August 8, 1890, subjecting liquors brought into any State or territory to its police laws.

The court says: It is sought to defend the act as an inspection act within the meaning of that provision of the Constitution of the United States which permits the states to impose excise duties as far as they may be absolutely necessary for executing their inspection laws. The act does indeed contain provisions looking to the ascertainment of the purity of liquors and to that extent may be said to be in the nature of an inspection law. But those provisions such as they are do not redeem the act from the charge of being an obstruction and interference with foreign and interstate commerce. It is not an inspection law. The prohibition of the importation of the wines and liquors of other States by citizens of South Carolina for their own use is made absolute and does not depend on purity or impurity of the article. Only the State functionaries are permitted to import in the State, and thus those citizens who wish to use foreign wines and liquors are deprived of the exercise of their own judgment and taste in the selection of commodities. To empower a State chemist to pass upon what the law calls the alcoholic purity of such importations by chemical analysis can scarcely come within any definition of a reasonable inspection law.

William A. Barber Attorney General of South Carolina, for plaintiffs in error.

J. P. Kennedy Bryan for defendant in error.

Case reported in full, 165 U. S. 107, 41 L. ed. 648.

LOUISVILLE & NASHVILLE RAILROAD COMPANY, *Pf. in Err.*,v.
COMMONWEALTH OF KENTUCKY *et al.*

(March 30, 1896.)

BY UNITED STATES SUPREME COURT.

Prohibition of railroad consolidation not unlawful.—The prohibition by a State of the consolidation of parallel and competing lines of railroad is not an interference with the power of Congress over interstate commerce.

The court says: It has never been supposed that the dominant power of Congress over interstate commerce took from the States the power of legislation with respect to the instruments of such commerce so far as the legislation was within its ordinary police powers. Nearly all the railways in the country have been constructed under State authority and it cannot be supposed that they intended to abandon their power over them as soon as they were finished. The power to construct them involves necessarily the power to impose such regulations upon their operation as a sound regard for the interests of the public may seem to render desirable. In the division of authority with respect to interstate railways, Congress reserves to itself the superior right to control their commerce and forbid interference therewith, while with the States remains the power to create and regulate the instruments of such commerce so far as necessary to the conservation of the public interests.

Ed. Baxter, James P. Helm, and Helm Bruce for plaintiff in error.

Alexander P. Humphrey and George M. Davis for defendants in error.

Case reported in full, 161 U. S. 677, 40 L. ed. 849.

INTERSTATE COMMERCE COMMISSION, *Appt.*,

v.
DETROIT, GRAND HAVEN, & MILWAUKEE RAILWAY COMPANY

(May 24, 1897.)

BY UNITED STATES SUPREME COURT.

Free cartage not a violation of the Interstate Commerce Act.—Furnishing free cartage or delivery of goods at one town but not

at another to which the same rates are charged for a shorter haul is not equivalent to charging a greater compensation for the shorter distance in violation of § 4 of the Act to Regulate Commerce, since that section relates only to the transportation by rail and the charges therefor. The failure of a railroad company to publish in its schedules of rates the fact of free cartage at a certain place where it has been openly and notoriously granted to shippers and consignees for a quarter of a century, is not a violation of § 6 of the act, at least when the Interstate Commerce Commission has not made any general order requiring free cartage to be included in such schedules.

Edward B. Whitney, Assistant Attorney General, for appellant.
Harrison Geer and *E. W. Meddaugh* for appellee.

Case reported in full, 167 U. S. 633, 42 L. ed. 306.

UNITED STATES

v.

SAMUEL G. DECOURSEY.

(August 17, 1897.)

By UNITED STATES DISTRICT COURT (N. D. N. Y.).

An indictment for unjust discrimination sufficient when charging that a specific freight charge was less than that charged another shipper.—An indictment for making unjust discrimination in freight rates against a shipper is sufficiently specific if it sets out the time, place, and circumstances under which the more valuable rate was received, and then alleges that the service was for less compensation than was received from another person “for doing for him a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions.”

Receiver not bound by traffic arrangement.—A receiver appointed for a railroad after it has entered into a joint traffic arrangement is not a party to the joint traffic within the meaning of the statute making it unlawful to charge more for transportation than the published rates, if he has not adopted, ratified, or recognized such tariff.

John T. Marchand and *William F. Mackey* for the United States.

John G. Milburn for defendant.

Case reported in full, 82 Fed. Rep. 302.

Ex parte RICHARD M. LACY.

(April 29, 1896.)

By VIRGINIA SUPREME COURT OF APPEALS.

Forwarding money to be wagered on horse race may be prohibited.—Forwarding money by telegraph to another State to be wagered on a horse race to take place in a third State may be made a criminal offense in the State from which the money is sent, although it is lawful to make such wagers in the State in which the wager is made.

The court says: The act in question would seem to be in furtherance of the obligation which rests upon the general assembly of Virginia to pass laws to suppress a recognized vice. There is no question that police power must be exercised in subordination to the Constitution of the State and *a fortiori* that it must not be in contravention of the Constitution of the United States. Now, as the proper discharge of the functions and duties intrusted to the national and State governments is necessary to the highest efficiency of both, it follows that in the development and growth of the two systems thus blended and interwoven, and operating directly, each by its own force, upon the same individuals, wisdom and prudence must prevail in order that the happiest and best results may be achieved. In the case before us, there would seem to be no reason why any antagonism or conflict should result from the exercise, within their appointed limits, of the power on the part of Congress to regulate commerce among the States, and the duty of the State to suppress a recognized offense against good morals.

R. Walton Moore, Samuel G. Brent, Francis L. Smith, and Edmund Burke for petitioner.

R. Taylor Scott, contra.

Case reported in full, 31 L. R. A. 822.

STARACE

v.

ROSSI.

(January 6, 1897.)

By VERMONT SUPREME COURT.

State may prohibit sale of liquors in original packages.—The fact that intoxicating liquor, which is the subject of a sale made in violation of the terms of the Vermont statute, was brought into the State in original packages does not exempt the sale from the operation of the statute in view of the act of Congress of August 8, 1890, which provides that all intoxicating liquors transported into any State shall, on arrival therein, be subject to the operation and effect of the laws of such State enacted in the exercise of the police powers to the same extent and in the same manner as though it had been produced in such State and shall not be exempt therefrom by reason of being introduced therein in original packages.

Richard A. Hoar for plaintiff.

W. A. Lord for defendant.

Case reported in full, 37 Atl. 1109.

MEXICAN NATIONAL RAILROAD COMPANY *et al.*, *Appts.*,

v.

R. R. SAVAGE.

(June 3, 1897.)

By TEXAS COURT OF CIVIL APPEALS.

That contract for shipment of cattle is only to border of State does not prevent the shipment from being interstate.—A shipment of cattle from a place in Texas, under a contract of shipment consigning them to parties at a place in Indian territory, is an interstate shipment, although the initial carrier by such contract simply agrees to carry the cattle to a specified point in Texas, from which place they are to be shipped by the shipper over other roads to their final destination by a continuous trip.

Dodd & Mullally and McCampbells & Welch for appellants.

G. R. Scott & Bro. for appellee.

Case reported in full, 41 S. W. 663.

MISSOURI, KANSAS, & TEXAS RAILROAD COMPANY, *Appl.*,

v.

J. L. FOOKES.

(April 28, 1897.)

By TEXAS COURT OF CIVIL APPEALS.

Ticket for passage from one State to another is interstate.—
An excursion ticket entitling the purchaser to a continuous passage over five different railroads, beginning in one State and ending in another after passing through two intermediates, is a contract for interstate passenger traffic within the provision of the Federal Constitution empowering Congress to regulate commerce among the several States. And a State statute requiring the redemption of unused portions of tickets or coupons cannot be made applicable to such ticket.

T. S. Miller and Head, Dillard, & Muse for appellant.

Rogers & Hayworth for appellee.

Case reported in full, 40 S. W. 858.

MISSOURI, KANSAS, & TEXAS RAILROAD COMPANY, *Appl.*,

v.

M. A. WITHERS.

(June 2, 1897.)

By TEXAS COURT OF CIVIL APPEALS.

*State may prohibit limitation of time to bring suit on interstate shipments.—*Texas act of March 4, 1891, providing that any stipulation in a contract limiting time for suit to less than two years, or which fixes the period within which the notice of damages as a condition precedent to the right to sue at less than ninety days shall be void, and providing that if any such notice is required the same may be given to the nearest or any other convenient local agent of the company requiring the same,—applies to interstate shipments.

T. S. Miller and Marshall Thomas for appellant.

Stringfellow & Coopwood for appellee.

Case reported in full, 40 S. W. 1073.

MISSOURI, KANSAS, & TEXAS RAILROAD COMPANY, *Appt.*,

v.

R. P. BOWLES.

(June 7, 1897.)

By INDIAN TERRITORY COURT OF APPEALS.

Interstate shipment at unauthorized rate void.—A contract of shipment within the operation of the Interstate Commerce Act is illegal and void and does not bind either party where it prescribes a greater or less rate of transportation than that prescribed by the Interstate Commerce Commission for property of the kind shipped.

Rate for hay.—An interstate commerce rate for hay covers old hay as well as new hay.

Shipper is in pari delicto in accepting illegal rate.—A shipper is *in pari delicto* with the carrier with reference to a contract of shipment which is illegal because it stipulates for a greater or less rate of transportation than is fixed by the Interstate Commerce Commission, although he did not in fact know that the contract was illegal.

Clifford L. Jackson and Joseph M. Bryson for appellant.

George A. Pate and R. L. Williams for appellee.

Case reported in full, 40 S. W. 899.

INTERSTATE COMMERCE COMMISSION

v.

WESTERN NEW YORK & PHILADELPHIA RAILROAD COMPANY,
et al.

(July 3, 1897.)

By UNITED STATES CIRCUIT COURT (W. D. Pa.)

Each of several roads liable for violation of Commission order by one.—Each of several railroad companies engaged in transporting petroleum oil under a common arrangement for continuous carriage from Pennsylvania to the seaboard is guilty of violating an order of the Interstate Commerce Commission where one of such companies violates such order, and all are subject to the jurisdiction of the court in the western district of Pennsylvania in which such violation was made, in a suit brought therein by the Commission to enforce such order.

Reparation orders of the Commission are not enforceable in equity.—Reparation orders made by the Interstate Commerce Commission in favor of shippers of petroleum unjustly discriminated against involve matters requiring trial by jury and are not enforceable in equity upon petition of the Commission.

Newly organized company absorbing companies subject to Commission order proper parties defendant.—Newly organized companies into which the railroads of two companies, violating an order of the Interstate Commerce Commission in pursuance of a common arrangement between them and other roads, pass, are properly made defendants in a suit to enforce the order of the Commission.

Harry Alvin Hall, Lee & Chapman, W. J. Heywang, and S. S. Mehard for complainants.

Stetson Tracy, and T. B. Jennings for New York, Lake Erie, & Western Railroad Company.

George B. Gordon for Pennsylvania Company.

Frank Rumsey for Western New York & Philadelphia Railroad Company.

David Wilcox and Knox & Reed for Delaware & Hudson Canal Company.

Francis I. Gowen and T. H. Janvier for Lehigh Valley Railway Company.

Sigourney Butler for Boston & Maine Railway Company.

Case reported in full, 82 Fed. Rep. 192.

TEXAS & PACIFIC RAILWAY COMPANY, *App.*,

v.

ALLEN J. PAYNE.

(December 12, 1896.)

By TEXAS COURT OF CIVIL APPEALS.

Statute prohibiting restriction of carrier's liability not applicable to interstate shipments.—Interstate shipments are not within the purview of the Texas statute restricting the right of common carriers to contract against liability for loss of goods not caused by the carrier's negligence.

Burden upon carrier to prove freedom from negligence.—The burden is upon a common carrier seeking to avoid liability for loss of an interstate shipment occasioned by fire, under a provision of the contract relieving it from liability for loss from fire, if not caused by its own negligence, to show that the fire was not due to its negligence.

Smallwood & Smith for appellant.

W. B. Crockett and Charles A. Jennings for appellee.

Case reported in full, 38 S. W. 366.

WESTERN PAPER BAG COMPANY. Appl.

L. V. JOHNSON & COMPANY.

(December 23, 1896.)

By TEXAS COURT OF CIVIL APPEALS.

Prohibition of business by foreign corporation does not interfere with interstate commerce.—The prohibition in the United States Constitution against interference with interstate commerce is not violated by Texas act April 3, 1889, p. 87, forbidding foreign corporations to transact business within the State or to maintain any action therein without filing its articles of incorporation with the Secretary of State.

Shipment into the State before procuring customers is forbidden by Texas statute.—A sale by a foreign corporation of a portion of the goods shipped into the State by it before procuring any contracts or orders for their sale and for the purpose of obtaining the advantage of a cheap freight rate is within the purview of Texas act April 3, 1889, p. 87, forbidding foreign corporations to transact business within the State without filing a certified copy of its articles of incorporation with the Secretary of State, or to maintain any action in the State unless it has filed such articles.

A. H. Graham for appellant.

George F. Pendexter and Warren W. Moore for appellee.

Case reported in full, 38 S. W. 364.

STATE OF NORTH CAROLINA
 SOUTHERN RAILWAY COMPANY, *App.*
 (November 10, 1896.)

BY NORTH CAROLINA SUPREME COURT.

Running of freight trains on Sunday may be prohibited.—The provision of N. C. Code, § 1937, making the running of engines on Sunday a misdemeanor, is a valid exercise of the police power when applied to trains running on railroad lines and engaged in interstate commerce until the passage of an act by Congress superseding the same.

The court says: Although it affects interstate commerce to some extent there is nothing in its provisions which suggests a purpose on the part of the legislature to interfere with such traffic or is indicative of any other intent than to prescribe in the honest exercise of the police power a rule of civil conduct for persons within her territorial limits. Such a law is valid and must be obeyed unless and until Congress shall have passed some statute which supersedes that act by prescribing regulations for the running of trains on the Sabbath on all railway lines engaged in interstate commerce. States have the power, at least in the absence of any action by Congress, to pass laws necessary to preserve the health and morals of the people, though their enforcement may involve some slight delay and disturbance in the transportation of persons and goods through their borders.

F. H. Busbee for appellant.

The Attorney General and *Shepherd & Busbee* for the State.

Case reported in full, 119 N. C. 814.

Ex parte HOLMAN.

(June 26, 1896.)

BY TEXAS COURT OF CRIMINAL APPEALS.

License tax on agent soliciting orders for foreign corporation illegal.—A statute requiring the payment of a license from one soliciting orders for photographs, pictures, etc., is unconstitutional as a tax upon interstate commerce when applied to an agent of a

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foreign corporation which has no place of business within the State.

Beaty & Culver for appellant.

Mann Trice for the State.

Case reported in full, 36 S. W. 441.

SHAW PIANO COMPANY, *Appt.*,

v.

T. B. FORD *et al.*

(May 22, 1897.)

BY TEXAS COURT OF CIVIL APPEALS.

Sale of article shipped into State interstate commerce.—A sale by a foreign corporation of a piano manufactured in the State of its incorporation and shipped to its agent within the State is an action of interstate commerce, whether it was sold to the agent before shipment or after shipment and storage by him, and the Texas statute forbidding foreign corporations to transact business within the State without having obtained a permit does not apply

Henry & Crawford for appellant.

A. H. Cooper, McCormick & Spence, and E. M. Browder for appellees.

Case reported in full, 41 S. W. 198.

UNION TRUST COMPANY

v.

ATCHISON, TOPEKA, & SANTA FÉ RAILROAD COMPANY (POSTAL TELEGRAPH CABLE COMPANY, Intervener, *Appt.*).

(December 20, 1895.)

BY NEW MEXICO SUPREME COURT.

Grant of exclusive right to telegraph company along railroad right of way unlawful.—A grant by a railroad company whose line is a military and post road of exclusive franchises along its right of way for telegraph purposes violates U. S. Rev. Stat § 5263, providing that any telegraph company shall have the right to construct lines of telegraph over any portion of the public domain of the United States and over and along any of the

military and post roads and over and across navigable streams of water, although part of the line is through property obtained by purchase or condemnation.

The court says that in each case it has been held that the section of the Revised Statutes referred to is in its nature prohibitive as to the force and effect of any contract entered into by a railroad company granting an exclusive privilege and franchise over and along its right of way over and through the public domain to any single telegraph company, where such railroad has acquired its right of way under and by virtue of an act of Congress, or which are or may be declared military or post roads by act of Congress; and the court refers to *Western U. Teleg. Co. v. Burlington & S. W. R. Co.* 11 Fed. Rep. 1; *Pensacola Teleg. Co. v. Western U. Teleg. Co.* 96 U. S. 1, 24 L. ed. 708; *Mercantile Trust Co. v. Atlantic & P. R. Co.* 63 Fed. Rep. 513.

Frank J. Loesch and Childers & Dobson for appellant Postal Telegraph Cable Company.

H. L. Waldo for the receivers.

Catron & Spiess and *H. D. Estabrook* for appellees Western Union Telegraph Company.

Case reported in full, 43 Pac. 701.

THE E. A. SHORES, JR.

(March 7, 1896.)

By UNITED STATES DISTRICT COURT (E. D. Wis.).

Act relieving owner of properly fitted ship from liability for losses applies to great lakes.—Section 3 of the act of Congress of February 13, 1893, which provides that if the owner of any vessel transporting merchandise or property to or from any port of the United States shall exercise due diligence to make the vessel in all respects seaworthy, and properly manned, equipped, and supplied, neither vessel, owner, agent, nor charterer shall be held responsible for damage or loss resulting from faults in navigation, errors in management, or dangers of the sea,—applies to shipments on the Great Lakes, notwithstanding §§ 1, 2 and 4 of the act relate only to shipments between the United States and foreign countries.

Vandyke, Vandyke & Carter and J. C. Richberg for libellants.
M. C. Krause for claimants.

Case reported in full, 73 Fed. Rep. 342.

EDWARD M. GEER

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STATE OF CONNECTICUT.

(*March 2, 1896.*)

By UNITED STATES SUPREME COURT.

Exportation of game birds may be prohibited.—A state has power to make it an offense to have in possession, for the purpose of transportation beyond the State, birds which have been lawfully killed within the State during the open season; and a statute creating this offense does not violate the interstate commerce clause of the Constitution.

The court, after tracing the origin of the right to animals *fera natura*, says: The sole consequence of the provision forbidding the transportation of game killed within the State beyond the State is to confine the use of such game to those who own it, the people of that State. The proposition that the State may not forbid carrying beyond her limits involves, therefore, the contention that a state cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other states to participate in that which they do not own. It was said in the discussion at bar, although it be conceded that the State has an absolute right to control and regulate the killing of game as its judgment deems best in the interests of its people, inasmuch as the State has here chosen to allow the people within her borders to take game, to dispose of it, and thus cause it to become an object of interstate commerce, as a resulting necessity such property has become the subject of interstate commerce, hence controlled by the provisions of the United States Constitution. But the errors which this argument involves are manifest. It presupposes that where the killing of game and its sale within the State are allowed it thereby becomes commerce in the legal meaning of that word. In view of the authority of the State to affix conditions to the killing and sale of game, predicated as is this power

on the peculiar nature of such property and its common ownership by all the citizens of the State, it may well be doubted whether commerce is created by an authority given by a State to reduce commerce within its borders to possession, provided such game be not taken when killed without the jurisdiction of the State. The common ownership imports the right to keep the property, if the sovereign so chooses, always within its jurisdiction for every purpose. But granting that the dealing in the game killed within the State created internal State commerce, it does not follow that such internal commerce became necessarily the subject-matter of interstate commerce. The distinction between internal and external commerce and interstate commerce is marked.

Hadlai A. Hull for plaintiff in error.

Solomon Lucas for defendant in error.

Case reported in full, 161 U. S. 519, 40 L. ed. 793.

LOUISVILLE & NASHVILLE RAILROAD COMPANY

v.

COMMONWEALTH OF KENTUCKY *et al.*

(*March 30, 1896.*)

By UNITED STATES SUPREME COURT.

State may prohibit consolidation of competing railroads.---
The prohibition by a State of the consolidation of parallel and competing lines of railroad is not an interference with the power of Congress over interstate commerce.

The court says: All police regulation of interstate railways interferes indirectly more or less with commerce between the States in the fact that they impose a burden upon the instruments of commerce and add something to the cost of transportation by the expense incurred in conforming to such regulations. These are, however, like the taxes imposed upon railways and their rolling stock, which are more or less, according to the policy of the State within which the roads are operated, but are still within the competency of the legislature to impose. There are certain intimations in some of our opinions which might perhaps lead to an inference that the police power cannot be exercised over a

subject confined exclusively to Congress by the Federal Constitution. But while this is true with respect to the commerce itself, it is not true with respect to the instruments of such commerce.

If it be assumed that the States have no right to forbid the consolidation of competing lines because the whole subject is within the control of Congress, it would necessarily follow that Congress would have the power to authorize such consolidation in defiance of State legislation,—a proposition which only needs to be stated to demonstrate its unsoundness.

Ed. Baxter, James P. Helm, and Helm Bruce for plaintiff in error.

Alexander P. Humphrey and George M. Davis for defendant in error.

Case reported in full, 161 U. S. 677, 40 L. ed. 849.

WESTERN UNION TELEGRAPH COMPANY

v.

DAVID W. JAMES.

(May 4, 1896.)

BY UNITED STATES SUPREME COURT.

State may impose penalty for negligence in delivering telegram.—A State statute imposing a penalty for lack of due diligence in delivering a telegram, if made in a reasonable exercise of the police power of the State, is not an unconstitutional interference with interstate commerce as applied to interstate messages, in the absence of any legislation by Congress on the subject.

The court said: The statute in question is of a nature that is in aid of the performance of a duty of the company that would exist in the absence of any such statute, and it is in no wise obstructive of its duty as a telegraph company. Can it be said that the imposition of a penalty for the violation of a duty which the company owed by the general law of the land is a regulation of or obstruction to interstate commerce within the meaning of that clause of the Federal Constitution under discussion? We think not. No tax is laid upon any interstate message, nor is there any

regulation of a nature calculated to at all embarrass, obstruct or impede the company in the full and fair performance of its duty as an interstate sender of messages.

John F. Dillon, George H. Fearons, and Rush Taggart for plaintiff in error.

No appearance for defendant in error.

Case reported in full, 162 U. S. 650, 40 L. ed. 1105.

ILLINOIS CENTRAL RAILROAD COMPANY

v.

PEOPLE OF THE STATE OF ILLINOIS, *Ex rel.* BUTLER.

(May 18, 1896.)

BY UNITED STATES SUPREME COURT.

State cannot require mail train to turn aside to stop at county-seat.—A State statute requiring a fast mail train carrying interstate passengers and the United States mail over an interstate highway established by authority of Congress, to delay the transportation of such passengers and mails by turning aside from the direct interstate route, and running to a station $3\frac{1}{2}$ miles away from a point on that route and back again to the same point, because such station is a county-seat, for the interstate travel to and from which the railroad company furnishes other and ample accommodation,—is an unconstitutional interference with and obstruction of interstate commerce and of the passage of the mails.

The court said: It may well be, as held by the courts of Illinois, that the arrangements made by the company with the Post-office Department of the United States cannot have the effect of abrogating a reasonable police regulation of the State. But a statute of the State which unnecessarily interferes with the speedy and uninterrupted carriage of the mails of the United States cannot be considered as a reasonable police regulation.

James Fentress and William H. Green for plaintiff in error.

John M. Lansden and Angus Leek for defendant in error.

Case reported in full, 163 U. S. 142, 41 L. ed. 107.

L. F. HENNINGTON

STATE OF GEORGIA.

(May 18, 1896.)

BY UNITED STATES SUPREME COURT.

State may prohibit running of trains on Sunday.—A State statute making it unlawful to run any freight train on Sunday is not an unconstitutional regulation of interstate commerce as applied to an interstate train in the same way that it applies to a domestic train, in the absence of any congressional legislation on the subject.

The court says: In our opinion there is nothing in the legislation in question which suggests that it was enacted with the purpose to regulate interstate commerce, or with any other purpose than to prescribe a rule of civil duty for all who on the Sabbath Day are within the territorial jurisdiction of the State. The legislature having, as will not be disputed, power to enact laws to promote order and secure the comfort, health, and happiness of the people, it is within its discretion to fix the day when all labor, within the limits of the State, works of necessity and charity excepted, should cease. It is not for the judiciary to say that the wrong day was fixed, much less than the legislature erred when it assumed that the best interests of all required that one day in seven should be kept for the purposes of rest from ordinary labor. Is the admitted general power of a State to provide by legislation for the health and morals and the general welfare of its people, so fettered that it may not enact any law whatever that relates to or affects in any degree the conduct of commerce among the States? If the people of a State deem it necessary to their peace, comfort, and happiness, to say nothing of the public health and the public morals that one day in each week be set apart by law as a day when business of all kinds carried on within the limits of that State shall cease, whereby all persons of every race and condition in life may have an opportunity to enjoy absolute rest and quiet, is that result, so far as interstate freight traffic is concerned, attainable only through an affirmative act of Congress giving its assent to such legislation?

The argument in behalf of the defendants rests upon the erroneous assumption that the statute of Georgia is such a regulation

of interstate commerce as is forbidden by the Constitution without reference to affirmative action by Congress and not merely a statute enacted by the State under its police power, and which, although in some degree affecting interstate commerce, does not go beyond the necessities of the case, and therefore is valid, at least until Congress interferes.

Edward Colston and George Hoadly, Jr., for plaintiff in error.
J. M. Terrell for defendant in error.

Cases reported in full, 163 U. S. 299, 41 L. ed. 166.

MISSOURI, KANSAS & TEXAS RAILWAY COMPANY

v.

CHARLES HABER *et al.*

(April 11, 1896.)

BY KANSAS SUPREME COURT.

State statute providing against introduction of Texas fever not repealed.—The various acts of the State legislatures designed to protect domestic cattle against the introduction and communication of Texas fever, are not nullified by the act of Congress of May 29, 1884, as such act is intended to operate concurrently with the statutes of several States to prevent the spread and infection of contagious diseases among the cattle.

T. N. Sedgwick and L. B. Kellogg for plaintiff in error.

J. J. Buck, E. W. Cunningham, and Madden Brothers for defendants in error.

Case reported in full, 56 Kan. 694.

RICHMOND & ALLEGHANY RAILROAD COMPANY *et al.*,

v.

R. A. PATTERSON TOBACCO COMPANY.

(March 12, 1896.)

BY VIRGINIA SUPREME COURT OF APPEALS.

State may make carrier liable for safe carriage beyond its own route.—A State statute making a carrier which accepts anything for transportation to a point beyond its own route liable for its

safe carriage to such point of destination, in the absence of a written contract to the contrary, and imposing upon the carrier the burden of proving even in case of such contract, that the loss or injury did not occur while the thing was in its charge, is not an unconstitutional interference with interstate commerce.

*William J. Robertson and Henry Taylor, Jr., for appellants
Courtney & Patterson for appellee.*

Case reported in full, 92 Va. 670.

PEOPLE OF THE STATE OF MICHIGAN

v.

THOMAS W. O'NEIL *et al.*

(July 28, 1896.)

By MICHIGAN SUPREME COURT.

State may prohibit sale of imported game.—A State statute prohibiting the sale of game or fish during the close season is not an unlawful restriction of interstate commerce as applied to game or fish imported from other States as articles of food.

The court says: The cases cited abundantly establish the doctrine that it is competent for the legislature, for the purpose of protecting game or fish, to absolutely prohibit the sale of game or fish caught during the close season or during the entire year. The question of the right to prohibit the importation and sale of game or fish, with the same purpose, is discussed, and the right affirmed in *Ex parte Maier*, 103 Cal. 476.

Fred A. Maynard, Allan H. Frazer, and Henry A. Mandell for the People.

T. E. Tarsney and W. W. Wicker for defendants.

Case reported in full, 68 N. W. 227.

DETROIT, GRAND HAVEN, & MILWAUKEE RAILWAY COMPANY

v.

INTERSTATE COMMERCE COMMISSION.

(April 14, 1896.)

By UNITED STATES CIRCUIT COURT OF APPEALS (6TH C.)

Court cannot modify or change order of Interstate Commerce Commission.—The circuit court cannot modify or change an

order of the Interstate Commerce Commission as, the powers of the Commission being administrative and not judicial, the ancillary and supplemental jurisdiction is necessarily limited to granting or refusing compulsory obedience to the lawful orders of the Commission as made by it.

Commission cannot compel abandonment of cartage.—An arbitrary and peremptory order of the Interstate Commerce Commission to abandon accessorial cartage at one place, as a discrimination against another place, without regard to rates or option as to readjustment of them, is an interference with the rights of property and its use beyond the power of the Commission.

Courts will not enforce order to abandon cartage.—An order of the Interstate Commerce Commission that a carrier discontinue cartage without extra charge at a certain place is not a lawful order or requirement which the courts can be invoked to enforce while it operates to deprive the carrier of its business at that place, whatever power the Commission may have to prevent inequality of rates between such place and another.

Collection and delivery need not be alike.—Collection and delivery are not required by the Interstate Commerce Act to be alike at places grouped under the same rate.

Carting service can be brought within the act only by combining rail carriage and cartage into one continuous service.—Although carting to and from stations when it becomes an element of interstate commerce is within the control of Congress and falls within the regulation of the Interstate Commerce Act in determining how far the provisions of such act apply, the fact that it is a separate and independent business not usually carried on by the railroad companies, nor within the scope of the act, nor under the power of Congress, should be kept in mind, and it is only by combining the rail carriage and cartage into one continuous cartage that carting service can be brought within the act pertaining to the equality of rates.

Competition cannot be excluded in fixing rates when necessary.—Although the bare naked fact of competition in an open field may not be available to justify discrimination of rates on the

ground of dissimilar conditions, it is not to be excluded a forceful element when it results in annihilation of the business of a carrier on its line because of a physical or mechanical disadvantage which it may overcome by the use of an appliance which it has long used for that purpose, the use of which is not complained of as unlawful discrimination where such use is not a mere colorable device to evade the act.

Free cartage may be permitted when required.—A dissimilarity of circumstances which will justify the inclusion of an extra charge at one place of cartage to and from the station of a railroad company while the same rate is charged without cartage at a place involving a shorter haul, but not in mere rivalry with the former, is created by the fact that the custom has been established at the former place to give such cartage many years prior to the adoption of the Interstate Commerce Act, and that the station of the company is located much farther from the business portion of the town than at the latter place, especially where to abandon such custom and obtain access to the business portion of the city would entail an enormous cost in right of way and necessities of construction and reconstruction and there is great competition of rival carriers for the traffic at the former place while there is not at the latter.

Grouping will not estop assertion that circumstances of transportation are not the same.—The grouping of a place requiring a shorter haul with one requiring a longer haul does not estop a carrier to assert that transportation to the two places is not under substantially similar circumstances and conditions; but merely admits that an equal rate is not prejudicial.

Cartage at one point will not make charge for haul greater than at another point where it is not done.—The provision of the Interstate Commerce Act denouncing a greater compensation for the aggregate for transportation for a shorter than for a longer distance means only that, taking all the rates of fare and charges incidental to the transportation together, these shall not be greater for the shorter haul, and is not necessarily violated where the circumstances are precisely the same, although the charge at one station includes cartage while it does not at the other, where such ca

is reasonable under the circumstances and conditions made by the carrier in the due course of its business at the place.

Before *Lurton*, Circuit Judge, and *Sage* and *Hammond*, District Judges.

E. W. Meddaugh and *Otto Kirchner* for appellant.

John Power, *R. L. Newnham*, and *D. E. Thomas* for appellee.

Case reported in full, 74 Fed. Rep. 803.

ALBERT H. BEARDSLEY

v.

NEW YORK, LAKE ERIE, & WESTERN RAILROAD COMPANY.

(*May, 1896.*)

BY NEW YORK SUPREME COURT.

State cannot regulate passenger fares from one State to another.

—A State statute attempting to regulate the fares of travelers from one State to another would be repugnant to the commerce clause of the Constitution, but the State legislature may regulate the fare for persons traveling from one point to another within the State where the trip is not part of a trip to a point without the State.

Herendeen & Mandeville for plaintiff.

D. C. Robinson and *Frederick Jennings* for defendant.

Case reported in full, 17 Misc. 256.

LINEHAN RAILWAY TRANSFER COMPANY

v.

PENDERGRASS.

(*September 16, 1895.*)

BY UNITED STATES CIRCUIT COURT OF APPEALS (8TH C.).

Steamboat taxable.—A steamboat is not exempt from taxation because it is engaged in interstate commerce.

Before *Caldwell*, *Sanborn*, and *Thayer*, Circuit Judges.

J. T. Lowe for appellant.

John J. Hornor and *E. C. Hornor* for appellee.

Case reported in full, 70 Fed. Rep. 1.

Re LAZARUS E. LEBOLT.

(November 9, 1896.)

By UNITED STATES CIRCUIT COURT (N. D. ILL.).

Question whether exercise of State power is interference with commerce is for Federal courts.—The question whether a given exercise of power upon the part of the State as applied to an article of interstate commerce is really the exercise of a police power, or only a restriction of such commerce, is for the Federal courts, to be determined by the public policy of the United States rather than that of the State.

Requiring license from one selling liquor in quantity an interference with interstate commerce.—A city ordinance requiring every person selling vinous liquors in quantities of one gallon or more to obtain a license, as applied to one selling wines for houses or manufacturers in other States, is not an exercise of the police power of the State, but an attempted regulation of a product of interstate commerce, not in the interest of public health or morality, and is invalid.

Moses, Pam, and Kennedy for petitioner.

William G. Beale for defendant.

Case reported in full, 77 Fed. Rep. 587.

SOUTHERN BUILDING & LOAN ASSOCIATION OF KNOXVILLE,
TENNESSEE,

v.

L. C. NORMAN.

(November 20, 1895.)

By KENTUCKY COURT OF APPEALS.

Tax on foreign building and loan association legal.—The freedom of commerce between States is not interfered with by a statute requiring every foreign building and loan association to pay into the State treasury annually 2 per cent of its annual gross receipts.

The court says: The statute, whatever may be said of the nature

of the tax it imposes, in express terms, affects only business done within the State. The business of the corporation is purely internal and domestic.

W. G. Bulitt and *Knott & Edelen* for appellant.

W. J. Hendrick for appellee.

Case reported in full, 31 L. R. A. 41.

COMMONWEALTH OF VIRGINIA

v.

JOHN MYERS.

(January 16, 1896.)

BY VIRGINIA SUPREME COURT OF APPEALS.

Unequal tax on peddlers illegal.—An exemption of manufacturers who have paid taxes on capital employed, from the provisions of a statute imposing a license tax upon peddlers, renders the statute unconstitutional as a regulation of commerce, when applied to a nonresident acting as an agent or employed in the sale of goods owned and manufactured by a nonresident corporation.

The court says: The right of the State to impose a license tax upon peddlers where it operates uniformly upon all citizens and does not discriminate in favor of citizens of Virginia as against citizens of other States, or where the tax imposed is in the exercise of the police power, and is not a regulation of commerce under cover of that power, although incidentally it may have that effect, has been uniformly maintained; but where an injurious discrimination is discovered in favor of the resident as against the nonresident, or with respect to the sales of articles manufactured in this State over similar articles manufactured abroad, the State laws are declared to be void as repugnant to the Constitution of the United States.

R. Taylor Scott for appellant.

Edmund Waddill, Jr., for appellee.

Case reported in full, 31 L. R. A. 379.

HOUSTON DIRECT NAVIGATION COMPANY
v.
INSURANCE COMPANY OF NORTH AMERICA.

(November 25, 1895.)

By TEXAS SUPREME COURT.

Interruption of carriage at State boundary will not change character of shipment.—A shipment from one point to another within the same State is interstate commerce, although a bill of lading is given and charges are collected to the latter point where the destination of property is in a foreign State to which a continuous voyage is contemplated, with only a stop to change carriers at the terminal point mentioned in the bill of lading.

Mott & Armstrong for plaintiff in error.

Hume & Kleberg for defendant in error.

Case reported in full, 30 L. R. A. 713.

TEXAS & PACIFIC RAILWAY COMPANY

v.
J. C. AVERY.

(November 6, 1895.)

By TEXAS COURT OF CIVIL APPEALS.

Nature of shipments not changed by interruption at boundary lines.—A contract of shipment purporting to be for transportation from a point within a State to its boundary line, the goods being consigned to a person in another State, at a stipulated rate, is an interstate shipment.

B. G. Bidwell for appellant.

G. W. Walthall and *S. H. Cowan* for appellee.

Case reported in full, 33 S. W. 704.

PRESTON

v.

FINLEY.

(March 9, 1896.)

BY UNITED STATES CIRCUIT COURT (W. D. TEX.).

Imposing tax on sale of newspaper not unlawful.—A State statute which imposes a tax upon the sale of certain designated newspapers and all other publications of like character is not an interference with commerce, although applied to the sale of newspapers published in another State.

The court says: The law indeed requires the person who sells the complainant's newspaper to pay the tax, but it is equally obligatory on all persons who sell other publications of like character to pay the same amount. Whether, therefore, the seller of the paper be a resident or nonresident of the State, whether the paper be edited or published in Missouri, Texas, or elsewhere,—each and all, without distinction or discrimination, must submit to the requirements of the law before selling, within the limits of the State, the designated papers. As thus construed, the act is not an encroachment on the commerce clause of the Constitution.

Harry L. Strohm and Boykin & Bashaw for complainant.

M. M. Crane, Attorney General of Texas, for defendant.

Case reported in full, 72 Fed. Rep. 850.

Ex parte LOEB.

(March 9, 1896.)

BY UNITED STATES CIRCUIT COURT (DIST. S. O.).

Solicitation of orders for liquors to be sent from other States cannot be prohibited.—A State cannot forbid the taking or solicitation of orders from inhabitants for intoxicating liquors to be supplied by dealers doing business in other States.

The court says: There can be no doubt that the State under its police power can control and regulate the liquor traffic either by prohibiting it altogether or by permitting its sale only on certain prescribed limitations and conditions. Nor can this power be controlled by any law of the United States. The importation of liquor into this State, and its sale in this State, either to the

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importer or to anyone else, come within this provision. And, as the State has forbidden it, such sale is illegal and void. So, even when one imports for his own use and consumption, if the packages come C. O. D., or to order, notify, or under a bill of lading attached to a draft, or in any other way by which the price is paid on or as a condition of the delivery of the goods in this State, this is unlawful, and the sale thus consummated is void.

But the court further says that the solicitation or giving of orders upon a dealer outside of the State does not come within the prohibited conduct. The nonresident dealer has the right to receive the order and fill it, and to transport it to this State. If the order is filled abroad and the price paid there, so that the liquor becomes the property then and there of the party ordering, the transaction is perfectly legitimate; nor does it affect the legality of that transaction if the liquor is not to be paid for until it reaches its destination, provided the sale be consummated abroad.

Cothran, Wells, Ansel, & Cothran for petitioner.

William A. Barber, Attorney General of South Carolina,
contra.

Case reported in full, 72 Fed. Rep. 657.

STATE OF NORTH CAROLINA
v
SOUTHERN RAILWAY COMPANY.
(November 10, 1896.)

BY NORTH CAROLINA SUPREME COURT.

State may prohibit running of Sunday trains.—A State statute making the running of engines on Sunday a misdemeanor is a valid exercise of the police power when applied to trains running on railroad lines and engaged in interstate commerce, until the passage of an act by Congress superseding the same.

The court says: Congress is unquestionably empowered, whenever it may see fit to do so, to supersede, by express enactment on this subject, all conflicting State legislation. But until its powers are asserted and exercised, the statute under which the indictment is drawn may be enforced, and will constitute one of the many illustrations of the principle that the States have the power, at least in the absence of any action by Congress, to pass laws

necessary to preserve the health and morals of their people, though their enforcement may involve some slight delay or disturbance of the transportation of goods or persons through their borders.

F. H. Busbee for appellant.

Frank I. Osborne, Attorney General, and *Shepherd & Busbee* for the State.

Case reported in full, 119 N. C. 814.

STATE OF NORTH CAROLINA, *Ex rel.* W. H. J. GOODWIN,

v.

CARALEIGH PHOSPHATE & FERTILIZER WORKS.

(October 27, 1896.)

BY NORTH CAROLINA SUPREME COURT.

State may exact inspection tax.—A State statute imposing a tax on each ton of fertilizers to defray the expense of inspection does not violate the interstate commerce law.

J. C. L. Harris for plaintiff.

No counsel for defendant.

Case reported in full, 119 N. C. 120.

COMMONWEALTH OF PENNSYLVANIA

v.

H. G. TOMBLER GROCERY COMPANY.

(November 2, 1896.)

BY PENNSYLVANIA COURT OF COMMON PLEAS.

Foreign corporation may be subjected to tax.—A New Jersey corporation having its sole place of business in Pennsylvania and an office in New Jersey for the purposes only of stockholders' meetings and statutory formalities is liable to a mercantile tax in Pennsylvania, although it buys merchandise and sells it in the original packages to be shipped beyond the State.

The court says: The question presented, then, is one where a nonresident engages in business in this State, not by soliciting orders to be filled elsewhere, but by the establishment of a permanent house to which all orders are sent and from which all shipments are made. That goods are purchased in other States and sold without the territory of Pennsylvania, even though it be in original packages, does not give the character of interstate

traffic to it as against this Commonwealth business is solely conducted. Property within our jurisdiction is subject to tax of their business as is exclusively carried by the companies be engaged generally in interstate transportation the exemption is much more strongly enforced in interstate transportation companies engaged in interstate transportation in respect to trading and manufacturing sometimes an incident.

E. J. Fox for plaintiff.

H. J. Steele for defendant.

Case reported in full, 6 Pa. Dist. R. 8.

WILLIAM H. BAXTER, .

v.

JAY THOMAS *et al.*

(September 4, 1896.)

BY OKLAHOMA SUPREME COURT.

State cannot impose tax on person taking concern.—A municipal ordinance requiring occupation tax by all persons in the city offering for sale goods, wares, and merchandise with commerce, so far as it applies to persons in the State for goods which are without the State for delivery to the persons ordering from him for delivery to the persons ordering from him.

Bayard T. Hainer for appellant.

Francis J. Lynch for appellees.

Case reported in full, 46 Pac. 479.

JAMES DONALD

v.

J. M. SCOTT *et al.*

Ex parte N. G. GONZALEZ

(December 2, 1895.)

BY UNITED STATES CIRCUIT COURT (Dist.

State cannot prohibit importation of liquor.

Liquor imported from another State into South Carolina for the personal use of the importer will be protected from seizure under the South Carolina dispensary act so long as such use continues, although it is kept at a bona fide club of which the importer is a member, in a locked receptacle of which he has the key.

The law says: The right to import under the interstate commerce law would be idle indeed if the subject-matter imported were not protected when it reached its destination. As it is protected in its importation solely because it is imported for personal use only, it will be protected so long as this personal use continues. If any attempt is made to dispose of or use it in violation of the police power of the State this protection ceases.

H. C. Patton for plaintiff.

William A. Barber, Attorney General of South Carolina, for respondent.

Case reported in full, 76 Fed. Rep. 554.

CLYDE STEAMSHIP COMPANY.

v.

CITY COUNCIL OF CHARLESTON *et al.*

(August 15, 1896.)

BY UNITED STATES CIRCUIT COURT (DIST. S. C.).

Maintaining an office to facilitate business does not change character of interstate carrier.—A steamship company running a line of steamships between New York and Jacksonville stopping at the port of Charleston for receiving and landing passengers and freight, in leasing a wharf or landing, maintaining a plant and machinery for taking in and discharging freight, and engaging stevedores and longshoremen, having an agent and clerks and an office with its usual furniture, and keeping a bank account as incidental to its business, is engaged only in interstate commerce, and is not subject to a license tax by the city of Charleston.

J. P. K. Bryan for complainant.

Charles Inglesby for defendants.

Case reported in full, 76 Fed. Rep. 46.

JAMES DONALD

v.

J. M. SCOTT *et al.**Ex parte* SCHNEIDER.

(June 4, 1896.)

BY UNITED STATES CIRCUIT COURT (Dist. S. C.).

Inspection law must be fair.—An inspection law must be fair, equal, and in no way discriminating in favor of either persons or property.

Law providing that all liquors must be tested by one chemist illegal.—A statute prohibiting the disposition of intoxicating liquors not tested by a chemist of a certain college and found by him to be chemically pure, and providing for their seizure, without any provision for an inspection by such chemist excepting of liquor purchased by the State board of control, cannot be sustained as an inspection law, but is an unlawful burden upon interstate commerce.

State cannot destroy competition of citizens of other States in liquor traffic.—A State which conducts the business through her agents of the sale of intoxicating liquors, and takes the place of her citizens, though denying to them the right of sale cannot destroy the competition of citizens of other States by denying them the right to trade in the same commodity in every respect like that in which it is trading, save that it is not protected by a certificate which the State alone can give, and which it distinctly withholds.

W. Gibbes Whaley and J. P. K. Bryan for petitioners.

William A. Barber, Attorney General of South Carolina, and C. P. Townsend for respondents.

Case reported in full, 74 Fed. Rep. 859.

JOHN SELVEGE

v.

ST. LOUIS & SAN FRANCISCO RAILWAY COMPANY

(June 30, 1896.)

BY MISSOURI SUPREME COURT.

State cannot prohibit transportation of Texas cattle.—A State

statute prohibiting the transportation through the State of any Texas, Mexican, Cherokee, or Indian cattle afflicted with Texas or Spanish fever, is an attempted regulation of interstate commerce and void.

L. F. Parker for appellant.

J. P. Nixon and *J. T. Moore* for appellee.

Case reported in full, 135 Mo. 163.

CUMBERLAND VALLEY RAILROAD COMPANY *et al.*
 v.
 GETTYSBURG & HARRISBURG RAILROAD COMPANY *et al.*
 (October 5, 1896.)

BY PENNSYLVANIA SUPREME COURT.

Exclusive agreement for interchange of traffic legal.—An agreement between railroad companies for the interchange of traffic and through transportation of passengers and freight is not illegal as giving exclusive privileges to either of the companies in the use of the other's roads to the detriment of other shippers or transporters, although a clause of the contract may contemplate a violation of law under circumstances not existing at the time it is made.

J. W. Wetzell, Thomas Hart, Jr., and S. S. Neely for appellants.

Edward B. Watts, John Hays, and D. Watson Rowe for appellees.

Case reported in full, 177 Pa. 519.

BOROUGH OF PORT CLINTON
 v.
 SHAFER.
 (June 1, 1896.)

BY PENNSYLVANIA COURT OF COMMON PLEAS.

Discrimination against citizens prohibited.—There must be no discrimination in police regulations against peddling or canvassing from house to house against citizens of other States.

Inspection in favor of domestic goods illegal.—A proviso of an article exercising the taxing power of a municipality by impos-

ing a license upon peddlers, that it shall soliciting orders for the manufacture of beyond the boundaries of the State, is void interstate commerce, as there are other art commerce besides manufactured goods.

*John W. Ryon and H. B. Bartholomeu
R. H. Koch and S. M. Enterline for de*

Case reported in full, 5 Pa. Dist. R. 582

JAMES DONALD

v.

J. M. SCOTT *et al.*

Ex parte A. E. GONZALES

(December 2, 1895.)

BY UNITED STATES CIRCUIT COURT (DIST.

*Imported liquor not protected after it h
person.*—A package of liquor imported int
another State for the personal use of the in
by the interstate commerce law from seizu
ute, after the importer has given it to anot
ter's use and consumption.

H. C. Patton for petitioners.

William A. Barber, Attorney General
respondents.

Case reported in full, 76 Fed. Rep. 559.

NEW YORK, NEW HAVEN, & HARTFORD

Pff. in Err.,

v.

PEOPLE OF THE STATE OF N

(March 1, 1897.)

BY UNITED STATES SUPREME COURT.

State may prohibit stoves in cars.—Cars
commerce are not exempt, in the absence
covering the subject, from the operation of
under penalties the heating of passenger
stoves or furnaces kept inside the cars or s

The court says: The mere grant to Congress of the power to regulate commerce with foreign nations and among the States did not, of itself and without legislation by Congress, impair the authority of the States to establish such reasonable regulations as were appropriate for the protection of the health, the lives, and the safety of the people. The statute in question had for its object to protect all persons traveling in the State of New York on passenger cars moved by the agency of steam against the perils attending a particular mode of heating such cars. There may be reason to doubt the efficacy of regulations of that kind. But that was a matter for the State to determine. We know from the face of the statute that it has a real, substantial relation to the object as to which the State is competent to legislate, namely, the personal security of those who are passengers on cars used within its limits. Why may not regulations to that end be made applicable within a State to cars of railroad companies engaged in interstate commerce as well as to cars used wholly within such State? The statute in question is not directed against interstate commerce. Nor is it within the meaning of the Constitution a regulation of commerce, although it controls, in some degree, the conduct of those engaged in such commerce. So far as it may affect interstate commerce it is to be regarded as legislation in aid of commerce and enacted under the power remaining with the State to regulate the relative rights and duties of all persons and corporations within its limits.

John M. Bowers for plaintiff in error.

Theodore E. Hancock, Attorney General of New York, and
William Henry Dennis for defendant in error.

Case reported in full, 165 U. S. 628, 41 L. ed. 853.

WESTERN UNION TELEGRAPH COMPANY, *Appt.*,

v.
EUBANK *et al.*

(February 4, 1897.)

BY KENTUCKY COURT OF APPEALS.

State may prevent carrier from contracting against common-law liability.—A provision of a State Constitution that a common carrier shall not be permitted to contract for relief from its

common-law liability is not in conflict with the interstate commerce clause of the Federal Constitution.

Richards, Baskin, & Ronald, A. S. Walker, George C. Harris, and George H. Fearons for appellant.

Goodnight & Roark and Sims & Covington for appellees.

Case reported in full, 38 S. W. 1068.

CITY OF ANNISTON

v.

SOUTHERN RAILROAD COMPANY.

(November 10, 1896.)

BY ALABAMA SUPREME COURT.

City may impose privilege tax on railroad.—The imposition of a privilege tax by a city for business done within such city by a railroad company whose lines extend into other States is not an interference with interstate commerce.

Kelly & McGhee for appellant.

Know, Bowie, & Pelham for appellee.

Case reported in full, 112 Ala. 557.

ALBERT H. BEARDSLEY, *Resp't.*,

v.

NEW YORK, LAKE ERIE, & WESTERN RAILROAD COMPANY

et al., App'ls.

(March Term, 1897.)

BY NEW YORK SUPREME COURT, APPELLATE DIVISION.

Law requiring mileage books applicable only within the State.—A State statute requiring every railroad company operating a railroad in the State more than 100 miles in length and authorized to charge a maximum fare of not more than 3 cents per mile to use mileage books will be construed, in the case of a railroad having more than that number of miles in the State but whose lines extend into other States, to apply solely to commerce within the State.

Frederic B. Jennings and David C. Robinson for appellants.

Herendeen & Mandeville for respondent.

Case reported in full, 15 App. Div. 251.

J. C. CURRY

v.

KANSAS & COLORADO PACIFIC RAILWAY COMPANY.

(April 10, 1897.)

BY KANSAS SUPREME COURT.

Pass may be issued for valuable consideration.—The prohibition of the Interstate Commerce Act against the issuance of railway passes does not apply to passes issued for money or other valuable consideration.

J. W. Lord and J. W. Deford for plaintiff in error.

Waggener, Horton, & Orr for defendant in error.

Case reported in full, 48 Pac. 579.

E. M. PARSONS, *Piff. in Err.*,

v.

CHICAGO & NORTHWESTERN RAILWAY COMPANY.

(May 24, 1897.)

BY UNITED STATES SUPREME COURT.

No recovery for discriminating charges.—A recovery by a shipper from a carrier because of partiality and favoritism to other shippers cannot be had in the absence of a statute, provided the complaining shipper has not been charged more than a reasonable rate.

Statements insufficient to show violation of Interstate Commerce Act.—An averment that the fixing or naming of Turner and Rochelle as the pretended termini of shipment under joint tariffs when destined to New York, Boston, Philadelphia, or Baltimore was a device to evade the law, and that the property was in fact transported to Chicago and there sold on the market or delivered to connecting roads for eastern points, without stating what evasion was intended or how the device operated to make an evasion of the law, and without denying that there was a joint tariff established or alleging that the tariff itself was a pretense,—is not sufficient to show a violation of the Act to Regulate Commerce.

Persons not injured cannot recover for violation of act.—One who does not show that he would have taken advantage of a joint tariff if he had known of it cannot recover of a carrier for failure to publish the tariff or file it with the Interstate Commerce Com-

mission as required by the Interstate Commerce Commission any party can recover under the Interstate Commerce Act. On nonpublication of a joint tariff he must show that the wrong of the carrier, but that the wrong has in fact been done by jury.

C. C. Nourse for plaintiff in error.

Lloyd W. Bowers for defendant in error.

Edward B. Whitney, Assistant Attorney General, for Commerce Commission.

Case reported in full, 167 U. S. 447, 42 L.

ALABAMA GREAT SOUTHERN RAILROAD

v.

CITY OF BESSEMER.

(December 17, 1896.)

By ALABAMA SUPREME COURT.

City may impose tax on carriage of passengers.—An ordinance imposing a license tax on persons doing business in the city by carrying passengers to the city to other points in the State is not a tax on commerce.

Smith & Weatherly for appellant.

No counsel for appellee.

Case reported in full, 21 So. 64.

STATE OF WEST VIRGINIA

v.

ELGIE MYERS.

(November 9, 1895.)

By WEST VIRGINIA SUPREME COURT OF APPEALS.

State may require oleomargarine to be colored pink.—A State statute that oleomargarine manufactured in the State shall be colored pink is not unconstitutional if it applies to products manufactured outside the State.

W. W. Arnett for plaintiff in error.

T. S. Riley and *White & Allen* for defendant in error.

Case reported in full, 42 W. Va. 822.

WESTERN UNION TELEGRAPH COMPANY

v.

MISSISSIPPI RAILROAD COMMISSION.

(May 18, 1896.)

By MISSISSIPPI SUPREME COURT.

State may impose regulations on telegraph companies.—A telegraph company is subject to such reasonable police regulations with reference to domestic transmission of messages as a State may see proper to impose to secure convenience to the people, notwithstanding that it is a foreign corporation, is engaged in interstate transmission of messages, and secured its right to erect its lines along the post roads in the State under an act of Congress.

Mayer & Harris for appellant.

Wylie N. Nash, Attorney General, for appellee.

Case reported in full, 21 So. 15.

W. H. FUQUA *et al.*, *Plffs. in Err.*,

v.

PABST BREWING COMPANY.

(December 14, 1896.)

By TEXAS SUPREME COURT.

Imported beer subject to anti-trust laws of State.—An article brought from another State under a contract of purchase ceases to be an article of interstate commerce so far as the contract makes an unlawful trust by giving the purchaser exclusive control of its sale in the vicinity and binding him not to deal in any other article of the kind. So beer brought from another State under an invalid trust agreement becomes upon its arrival in the State immediately subject to an anti-trust law of the State by reason of the act of Congress of August 8, 1890.

George E. Holland for plaintiffs in error.

Browning & Madden for defendant in error.

Case reported in full, 35 L. R. A. 241.

J. M. SCOTT *et al.*, *Plffs. in Err.*,

v.

JAMES DONALD.

(*January 18, 1897.*)

By UNITED STATES SUPREME COURT.

State cannot discriminate against importers of liquors.—Where a State recognizes the manufacture, sale, and use of intoxicating liquors as lawful it cannot discriminate against bringing special articles in and importing them from other States.

South Carolina dispensary law invalid.—The South Carolina dispensary law of 1895 is unconstitutional and void as a hindrance to interstate commerce and an unjust preference of the products of that State as against similar products of other States, and is not within the scope of the act of August, 1890, subjecting intoxicating liquors brought into any State or territory to its police laws.

William A. Barber, Attorney General of South Carolina, for plaintiffs in error.

J. P. Kennedy Bryan for defendant in error.

Case reported in full, 165 U. S. 58, 41 L. ed. 632.

STATE OF IOWA

v.

DONALD C. MCGREGOR.

(*July 23, 1896.*)

By UNITED STATES CIRCUIT COURT (N. D. IOWA).

State cannot prohibit sale of cigarettes in original packages.—One who imports from another State packages of cigarettes in pasteboard boxes containing ten cigarettes without case covering or inclosures about such packages cannot be punished under a State statute prohibiting the sale or keeping for sale such cigarettes, where they are kept and sold in such original packages.

Davis, Kellogg, & Severance and *W. W. Fuller* for petitioner.

Milton Remley, Attorney General of Iowa, for respondent.

Case reported in full, 76 Fed. Rep. 956.

F. R. OSBORNE, *Pf. in Err.*,

v.

STATE OF FLORIDA.

(January 4, 1897.)

By UNITED STATES SUPREME COURT.

State may tax local business of express company.—A State statute imposing a license tax on local business of an express company, but which does not require a license for doing interstate business, is valid.

John E. Hartridge for plaintiff in error.

W. B. Lamar, Attorney General of Florida, for defendant in error.

Case reported in full, 164 U. S. 650, 41 L. ed. 586.

G. S. WIGHT, *Pf. in Err.*,

v.

UNITED STATES.

(May 24, 1897.)

By UNITED STATES SUPREME COURT.

Allowance for cartage to one shipper illegal.—An allowance for cartage made by a railroad company to a shipper who had no siding connection with that line, although he had such connection with another competing line, is in violation of the section of the Interstate Commerce Act prohibiting rebates, drawbacks, and special rates, when a similar allowance was not made to another person who shipped goods over the same line, under the same circumstances except that he had no siding connection with either road.

The phrase "under substantially similar circumstances and conditions" in § 2 of the Interstate Commerce Act refers to the matter of carriage, and does not include competition.

The court says: The wrong prohibited by the section is a discrimination between shippers. It was designed to compel every carrier to give equal rights to all shippers over its own road and

to forbid it by any device to enforce higher than another.

Hugh L. Bond, Jr., and John K. Cow
Edward B. Whitney, Assistant Attorn
ant in error.

Case reported in full, 167 U. S. 512, 42

UNITED STATES

v.

ADDYSTON PIPE & STEEL CO

(February 5, 1897.

BY UNITED STATES CIRCUIT COURT (E. D.

Combination to prevent competition n
to local business.—An association of man
pipe for the purpose of preventing destru
within the act of Congress forbidding mo
restraint of trade, where it does not cont
merce more than any ordinary manuf
whose products find a market in other Sta
tic markets.

Federal authority cannot interfere wi
eral authority over monopolies or contract
exists only when they assume such author
as to interfere directly and substantially, s
ally, with interstate commerce or commer

Provision for bonus by member of ass
tract not illegal.—An agreement between
iron pipe by which a bonus is paid by the
tracts to the association is not in restraint
where the object of such bonus and the as
vent all members from furnishing and s
but to determine which one shall do so.

The court says: The cases recognize the
subjects of commerce and commerce itself
instruments, and adds to such commerce s
of commerce. In regard to State legislati

from the beginning that to render such legislation subject to constitutional objection under the commerce clause, the effect of the legislation upon interstate commerce must be direct and not incidental or indirect. A particular business must be distinguished from the mere subjects of the business and from mere incidents to or instruments by which the business is carried on. It is hardly conceivable that any large industrial or manufacturing establishment should be carried on without shipping products from one State to another, and such would certainly be the course of business contemplated. Nevertheless the business of such an establishment would be related to interstate commerce only incidentally or indirectly. Commerce would not be the main business nor within the main purpose of the ordinary manufacturing establishment. Interstate commerce would be altogether an incident. If every private enterprise which is carried on in part or chiefly by interstate shipments or by a mode of business which makes this necessary is to be regarded as thereby so related to interstate commerce as to come within the regulating power of Congress it is obvious that this power could at once be extended to almost every form of business in the country which is conducted on anything like an extensive scale. So liberal an interpretation as this would obviously in a large sense obliterate the lines between Federal and State jurisdiction, and, as an act of Congress is paramount in authority, would strike down the autonomy of the States.

James H. Bible for complainant.

Brown & Spurlock and *W. E. Spears* for defendants.

Case reported in full, 78 Fed. Rep. 712.

FRED MILLER BREWING COMPANY

v.

STEVENS *et al.*

(May 11, 1897.)

BY IOWA SUPREME COURT.

Bond of seller of liquor in original packages may be made void by State statute.—A bond executed in Iowa and delivered and accepted in Wisconsin as security for the acts of the principal obligor in selling in the former State, in violation of the laws

APPX.

thereof, intoxicating liquors shipped in packages from the latter State, is void and the act of Congress of August 8, 1884, prohibiting the transportation of intoxicating liquors transported into any State therein, be subject to the operation and effect of the act of Congress of August 8, 1884, State enacted in the exercise of its police power to the extent as if such liquors had been produced in such State.

Kean & Sherman for appellant.

Swan, Lawrence, & Swan for appellee.

Case reported in full, 71 N. W. 186.

R. B. F. PEIRCE

v.

EDWARD VAN DUSEN

(February 2, 1891)

BY UNITED STATES CIRCUIT COURT OF

State may make carrier liable for negligence of others engaged in interstate commerce. The court says: Undoubtedly the liability of interstate railroad companies for their service may be covered by national statute making railroad companies liable on account of the negligence of others engaged in interstate commerce, so long as Congress does not declare otherwise.

The court says: Undoubtedly the liability of interstate railroad companies for their service may be covered by national statute making railroad companies liable on account of the negligence of others engaged in interstate commerce, so long as Congress does not declare otherwise. But as Congress has not dealt with the subject, it is for the State to declare that an employee of a corporation doing business there, in interstate commerce among the States, should be deemed to be an agent of the State, and his acts within that State, the superior, no other employees placed under his control.

Before *Harlan*, Circuit Justice, and 2 Judges.

Clarence Brown for plaintiff in error.

Orville S. Brumback and *Charles A. Brown* for defendant in error.

Case reported in full, 78 Fed. Rep. 691.

HOUSTON, EAST & WEST TEXAS RAILWAY COMPANY

v.

PETERS *et al.*

(March 11, 1897.)

By TEXAS COURT OF CIVIL APPEALS.

State cannot compel interstate carrier to deliver goods.—A State statute prescribing a penalty for failure of a carrier to deliver goods in its possession on demand of the consignee and tender of the freight specified in the bill of lading is inoperative so far as it imposes a penalty against a carrier engaged in interstate commerce.

The decision is based upon that of *Gulf, C. & S. F. R. Co. v. Hefley*, 158 U. S. 98, 39 L. ed. 910, and the court says that the act of Congress and the State statute operate on the same subject-matter and prescribe different rules concerning it; and when this is so they conflict, and the State law must necessarily give way to the Federal.

W. H. Wilson and Baker, Botts, Baker, & Lovett for appellant.
Hill & Hill for appellees.

Case reported in full, 40 S. W. 428.

CHARLES U. COTTING

v.

KANSAS CITY STOCKYARDS COMPANY *et al.*

(April 12, 1897.)

By UNITED STATES CIRCUIT COURT (DIST. KAN. FIRST DIV.).

That business is located in two States does not make it interstate.—That the yard of a stock-yards company is located in two States, and that the company does business in both, do not make its business interstate so as to prevent its regulation by the statute of one of the States.

Waggener, Horton, & Orr for complainant.
L. C. Boyle, Attorney General of Kansas, and *David Martin* for defendants.

Case reported in full, 79 Fed. Rep. 679.

JOHN E. ROSELLE

v.

FARMERS' BANK OF NORBORNE (McAULIFFE, Intervener).

(March 2, 1897.)

BY MISSOURI SUPREME COURT.

Lottery ticket not protected as interstate commerce.—A ticket in a lottery authorized at the place of issue is not within the protection of the interstate commerce clause of the United States Constitution.

The court says: The people of the State of Missouri have the inherent, sole, and exclusive right to regulate the internal government and police thereof subject to the paramount force of the Federal laws. The Federal laws do not sanction the agreement here in question or add anything towards improving its legal quality as determined by the local law. A ticket in a lottery authorized at the place of issue cannot certainly be regarded as within the protection of the interstate commerce clause of the Federal Constitution; certainly not in view of the legislation of Congress touching lotteries.

Hale & Son and J. W. Sebree for appellant.

Morton Jourdan for respondent.

Case reported in full, 39 S. W. 274.

HENDERSON BRIDGE COMPANY, *Pf. in Err.*,

v.

COMMONWEALTH OF KENTUCKY.

(March 15, 1897.)

BY UNITED STATES SUPREME COURT.

State may tax corporation maintaining bridge over river on State boundary.—A State tax on the intangible property of a company chartered by that State and maintaining a bridge over a river on the State boundary is not an unconstitutional burden on interstate commerce when the business carried on over the bridge is done by other persons and corporations which pay the bridge company tolls for the privilege of using the bridge.

State right to tax bridge not defeated by regulation of bridge by Congress.—The fact that a bridge over a navigable river be-

tween two States is made a post road by an act of Congress which also regulates the height of the bridge and the width of the spans does not interfere with the right of the State to impose taxes on the bridge company.

The court says: Clearly the tax was not a tax on the interstate business carried on over or by means of the bridge because the bridge company do not transact such business. That business was carried on by the persons and corporations which paid the bridge company tolls for the privilege of using the bridge. The fact that the tax in question was to some extent affected by the amount of the tolls received and therefore might be supposed to increase the rate of tolls is too remote and incidental to make it a tax on the business transacted.

James P. Helm and Helm Bruce for plaintiff in error.

William J. Hendrick for defendant in error.

Case reported in full, 166 U. S. 150, 41 L. ed. 954.

UNITED STATES OF AMERICA, *Appt.*,
v.
TRANS-MISSOURI FREIGHT ASSOCIATION.
(*March 22, 1897.*)

BY UNITED STATES SUPREME COURT.

Contract between competing carriers relating to traffic rates illegal.—A contract between competing railroads relating to traffic rates for the transportation of articles of commerce between the States, the direct effect of which is to produce a restraint of trade or commerce, is within the provision of the act of Congress of July 2, 1890, declaring that every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations is illegal.

Competing roads cannot agree to maintain rates.—Competing and nonconnecting railroads are not authorized by the commerce act to make an agreement for maintenance of rates and the curbing of competition.

Combinations in restraint of trade are prohibited.—All com-

binations in restraint of trade or commerce are prohibited by the act of Congress of July 2, 1890, whether they are in the form of trusts or in any other form.

Unlawful restraints not limited to those unlawful at common law.—The words “unlawful restraints and monopolies” in the title of the act of Congress of July 2, 1890, do not show that the purpose of the act was to include only contracts which were unlawful at common law, but refer to and include those restraints and monopolies which are made unlawful in the body of the act.

All contracts in restraint of trade prohibited.—The term “contracts in restraint of trade” as used in the act of Congress of July 2, 1890, does not refer only to contracts which were invalid at common law but includes every contract in restraint of trade and is not limited to that kind of contract which is an unreasonable restraint of trade.

Combination to maintain reasonable rates illegal.—The right of the railroad company to charge reasonable rates does not include the right to enter into a combination with competing roads to maintain rates.

Agreement between competing roads to maintain reasonable rates illegal.—An agreement between railroad companies for the purpose of mutual protection by establishing and maintaining reasonable rates, rules, and regulations on all freight traffic both through and local is by its necessary effect an agreement to restrain trade or commerce within the meaning of the act of Congress of July 2, 1890, no matter what the intent was on the part of those who signed it.

Statute not applied to pre-existing contract.—Retroactive effect is not given to a statute making combinations in restraint of trade illegal by applying the statute to a continuation after its passage of a pre-existing contract.

United States may bring action to dissolve unlawful combination.—The United States is authorized by the act of July 2, 1890, to bring an action for the dissolution of an unlawful combination of carriers in violation of such act and for an injunction against continuing such a combination.

The court says: The language of the act includes every con-

tract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several States or with foreign nations. So far as the very terms of the statute go they apply to any contract of the nature described. A contract therefore that is in restraint of trade or commerce is by the strict language of the act prohibited, even though such contract is entered into between competing common carriers by railroad and only for the purposes of thereby affecting traffic rates for the transportation of persons and property. If such an agreement restrain trade or commerce it is prohibited by statute unless it can be said that an agreement, no matter what its terms, relating only to transportation, cannot restrain trade and commerce. We see no escape from the conclusion that if any agreement of such a nature does restrain it the agreement is condemned by this act.

Judson Harmon, Attorney General, for the United States.

John F. Dillon, James C. Carter, E. J. Phelps, A. L. Williams, Harry Hubbard, and John M. Dillon for appellee.

W. F. Guthrie and Lloyd W. Bowers filed briefs on behalf of certain railroad companies.

Case reported in full, 166 U. S. 290, 41 L. ed. 1007.

PEOPLE OF THE STATE OF NEW YORK, *Appt.*,

v.

SAMUEL K. HAWKINS.

(September 8, 1897.)

BY NEW YORK SUPREME COURT, APPELLATE DIVISION.

State police power cannot control constitutional rights of United States government.—The police power of the State cannot be set up to control the inhibitions of the Federal Constitution or the powers of the United States government created thereby.

State cannot prohibit sale of convict-made goods.—The interstate commerce provision of the United States Constitution is violated by a law forbidding the sale of all goods made by convict labor, including those made in the State of New York, to be labeled or branded before being exposed for sale or sold, so far as con-

cerns goods made by convict labor in other States which are not from their nature or condition withdrawn from the class of merchandise belonging to commerce, as the police power of the State does not extend to such articles when considered in connection with interstate commerce.

Harry C. Perkins and James A. McCormick for appellant.
Reynolds, Stanchfield, & Collins for respondent.

Case reported in full, 47 N. Y. Supp. 56.

B. L. FIELDER, *Appt.*,

v.

MISSOURI, KANSAS, & TEXAS RAILWAY COMPANY OF TEXAS.
(October 27, 1897.)

By TEXAS COURT OF CIVIL APPEALS.

State cannot impose penalty for discrimination between shippers.—Discrimination by a railroad company between its customers in delivering on spur tracks at the point of delivery carloads of coal shipped from another State is within the control of Congress as interstate commerce; and no penalty for such discrimination can be recovered under a State statute.

The court says: The right of Congress to control interstate commerce is not solely limited while the commerce is in actual transportation, but extends to and includes the necessary handling of that commerce at terminal points. It is as much necessary to the interest of interstate commerce and the uniformity of rule that should apply to transportation of that character of commerce, which is one of the objects intended to be accomplished by reserving this power solely to Congress, that it should retain control and dominion over the shipments at the beginning and terminal points, as well as during the actual transportation of the commerce.

Beaty & Culver for appellant.

T. S. Miller and Head, Dillard, & Muse for appellee.

Case reported in full, 42 S. W. 362.

UNITED STATES OF AMERICA, *ex rel.* INTERSTATE COMMERCE
COMMISSION,

v.

SEABOARD RAILWAY COMPANY.

(July 2, 1897.)

BY UNITED STATES CIRCUIT COURT (S. D. ALA.).

Local road may engage in interstate commerce by offering part of through line.—A railroad company whose road wholly lies within the State in which it was organized is engaged in interstate commerce in transporting property between points without the State and points in the State under a common arrangement for a continuous carriage or shipment, where it receives and receipts for its part of through freight, as provided for in a joint freight tariff, upon through way bills, although the proportion received is the same in amount as its regular local rate.

Joseph N. Miller for relator.

E. L. Russell for defendant.

Case reported in full, 82 Fed. Rep. 563.

STATE OF ALABAMA, *App't.*,

v.

JOHN D. STRIPLING.

(February 2, 1897.)

BY ALABAMA SUPREME COURT.

State may prohibit wagers on events to take place outside of its borders.—A prohibition of wagers or the sale of pools or tickets or other chance on any horse race, prize fight, or other contest outside of the State is not an unconstitutional interference with commerce.

The court says: The State has a right to protect the lives and morals of its people against acts which threaten them, even though such acts can only be accomplished through some instrumentality of interstate commerce. And it might as well—indeed, with less want of force—be said that a law of this State inhibiting agencies here from procuring from other States, and disseminating here, obscene literature or criminal libels upon our citizens, would be an unwarranted interference with commerce between

the States. The right of the State to enact and enforce such laws, assuming they touch upon such commerce, is supported by the same principle which upholds State statutes forbidding the running of trains on Sunday.

William C. Fitts, Attorney General, and *Thomas G. Jones* for the State.

John W. A. Sanford, Jr., for appellee.

Case reported in full, 21 So. 409.

MORRIS L. GLADSON, *Ptf. in Err.*,

v.

STATE OF MINNESOTA.

(*April 12, 1897.*)

BY UNITED STATES SUPREME COURT.

State may require train to stop at all county seats.—A railroad train running between two points within the same State, although carrying passengers who are to be transferred to another train of the same company which shall carry them to another State, is not exempt from a State law requiring it to stop at county seats, on the ground that this constitutes an interference with interstate commerce.

Emerson Hadley and *James D. Armstrong* for plaintiff in error.

H. W. Childs, Attorney General of Minnesota, and *George B. Edgerton* for defendant in error.

Case reported in full, 166 U. S. 427, 41 L. ed. 1064.

COMMONWEALTH OF KENTUCKY, *Appt.*,

v.

CHESAPEAKE & OHIO RAILWAY COMPANY.

(*April 14, 1897.*)

BY KENTUCKY COURT OF APPEALS.

Statute may require lease of railroad to be recorded.—A State statute does not unlawfully interfere with interstate commerce which requires every person operating a railroad in the State

under a lease to record the same in the office of the Secretary of State and in the county clerk's office of every county in which the road or any part thereof lies, within thirty days after the execution of the contract.

M. R. Lockhart and W. S. Taylor for appellant.

W. H. Wadsworth and L. J. Crawford for appellee.

Case reported in full, 40 S. W. 250.

WESTERN UNION TELEGRAPH COMPANY, *Pf. in Err.*,

v.

J. M. POWELL.

(*February 4, 1897.*)

BY VIRGINIA SUPREME COURT OF APPEALS.

State may provide forfeiture for failure to transmit telegram.

—The commerce clause of the United States Constitution is not infringed by a State statute providing that any telegraph company doing business in the State which fails to transmit a message as provided in the statute shall forfeit \$100 to the person sending or wishing to send the message; nor by a statute providing for a like forfeiture where the company fails to deliver the message promptly to the person to whom it is addressed after its arrival at destination, where the regulations of the company require such delivery.

Stiles & Holladay for plaintiff in error.

Pollard & Sands for defendant in error.

Case reported in full, 26 S. E. 828.

COMMONWEALTH OF PENNSYLVANIA

v.

O. W. DUNHAM, *Appt.*

(*March 17, 1897.*)

BY PENNSYLVANIA SUPERIOR COURT.

Delivery depot cannot be established to protect peddlers.—

Citizens of one State cannot lawfully establish a delivery depot in another State for the purpose of protecting hawkers and

peddlers of goods taken from such depot, who travel from door to door vending the same in violation of State statutes.

John G. Reading, Jr., C. Bariles, Jr., and B. S. Bentley for appellant.

W. R. Peoples, John J. Reardon, and N. M. Edwards for appellee.

Case reported in full, 4 Pa. Super. Ct. 74.

STATE OF WEST VIRGINIA, *Ptf. in Err.*,

v.

CHARLES GOETZE.

(*April 24, 1897.*)

BY WEST VIRGINIA SUPREME COURT OF APPEALS.

State cannot tax sale of cigarettes in original packages.—A State cannot require a license fee for selling cigarettes at retail if the sale is of cigarettes in the original packages in which they are placed by manufacturers in another State and imported into the State making the prohibition.

Packages containing ten cigarettes are original packages.—Paper packages each containing ten cigarettes placed therein by the manufacturer, and each bearing a proper label giving the name of the cigarettes, the caution notice, the number of the factory, and of the revenue district, the name of the manufacturer, and of the State in which they are manufactured, and bearing the internal revenue stamp for ten cigarettes, duly canceled, pasted across the end of each package so as to seal the same, in accordance with the requirements of the act of Congress and the internal revenue laws governing the packing, shipment, and sale, are original packages within the rule that State restrictions on the sale in original packages of goods manufactured in and shipped from another State is an interference with interstate commerce, and the fact that for convenience for shipment they are placed in large wooden boxes does not change their character in that respect.

John A. Howard and T. S. Riley, Attorney General, for plaintiff in error.

S. G. Smith and W. W. Fuller for defendant in error.

Case reported in full, 27 S. E. 225.

STATE OF TENNESSEE, Appt.

v.

JAMES McKINNEY SCOTT.

(February 17, 1897.)

BY TENNESSEE SUPREME COURT.

Soliciting pictures not subject to privilege tax.—Soliciting pictures to be enlarged out of the State constitutes interstate commerce, and the occupation cannot be subjected to a privilege tax.

G. W. Pickle, Attorney General, for the State.

P. M. Ester for appellee.

Case reported in full, 39 S. W. 1.

INTERSTATE COMMERCE COMMISSION, Appt.

v.

ALABAMA MIDLAND RAILWAY COMPANY et al

(November 8, 1897.)

BY UNITED STATES SUPREME COURT.

Interstate Commerce Commission has no power to prescribe rates.—Congress has not conferred upon the Interstate Commerce Commission the legislative power of prescribing rates either maximum or minimum or absolute, nor has it authorized the Commission to obtain from the courts a peremptory order that in the future the railroad companies should follow the rates which it has determined to have been in the past reasonable and just.

Competition may be considered under § 4 but not under § 2 of the act.—Competition between rival routes, which affects rates, is a fact to be considered in determining whether property transported to a competitive point for less rates than are charged for property to an intermediate point on the same line is carried under "substantially similar circumstances and conditions," as that phrase is found in § 4 of the Act to Regulate Commerce; but such competition is not applicable to § 2 of the act.

Application for relief not necessary to justify adjustment of rates with reference to dissimilarity of circumstances.—An application to the Interstate Commerce Commission for relief

from the operation of § 4 of the Act to Regulate Commerce is not necessary in order to entitle the carrier to adjust its rates with reference to the dissimilarity of circumstances and conditions, including the existence of competition, and to justify such rates in the courts when complained of.

Question of undue preference is one of fact.—Whether there has been an undue or unreasonable prejudice or preference, or whether the circumstances and conditions of carriage have been substantially similar or otherwise, is a question of fact depending on the matters proved in each case.

Decision of Interstate Commerce Commission is subject to review.—The decision of the Interstate Commerce Commission on a charge that rates are unjust and unreasonable or make unjust discriminations and preferences in violation of § 3 of the Act to Regulate Commerce is subject to review in the courts on a consideration of the allegations and evidence of the parties, giving effect, however, to the findings of fact by the Commission as prima facie evidence of the matters therein stated.

L. A. Shaver, Edward B. Whitney, Assistant Attorney General, and George F. Edmunds for appellant.

Ed. Baxter and A. A. Wiley for appellees.

Case reported in full, 168 U. S. 144, 42 L. ed. 414.

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